

Edward Patrick Swan, Jr., State Bar No. 089429
Caryn M. Anderson, State Bar No. 247038
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone No.: 619.236.1414
Fax No.: 619.232.8311

Attorneys for Third Party Scantibodies Laboratory Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABBOTT LABORATORIES,

Plaintiff,

v.

SCANTIBODIES LABORATORY, INC.,

Defendant.

Case No. 08-CV-1525 H (BLM)

The Hon. Barbara L. Major

**THIRD PARTY SCANTIBODIES
LABORATORY, INC.'S OPPOSITION
TO MOTION TO COMPEL**

Date: September 17, 2008
Time: 3:00 p.m.

Third Party Scantibodies Laboratory Inc. ("SLI") respectfully submits this opposition to the motion to compel two subpoenas filed by Abbott Laboratories ("Abbott").

INTRODUCTION

The two subpoenas arise out of a patent action pending in the Northern District of Illinois in Chicago between Abbott and Church & Dwight Co., Inc. ("C&D"). SLI is not a party to the Chicago action, but as Abbott has known for years, manufactures pregnancy test kits for C&D.

This is not Abbott's first attempt to subpoena a large number of documents from SLI. In a prior action between Abbott and C&D filed in the District of New Jersey in 2005, Abbott issued a similarly overbroad document subpoena to SLI. *See* Exhibit 1 to the declaration of Edward Patrick Swan, Jr. ("Swan Decl."). On November 30, 2006, SLI timely served objections to the subpoena. Swan Decl., Exhibit 2. Abbott made no attempt to compel the production of these subpoenaed documents, and no documents were produced.

Now, in a newly filed case in Chicago, Abbott has again subpoenaed documents from SLI, this time increasing the categories of documents from 7 to 18. Swan Decl., Ex. 3. SLI served timely objections to the subpoena. Swan Decl., Ex. 4. Counsel for Abbott and SLI then engaged in meet and confers that limited Abbott's subpoena to Request No. 11 calling for the production of certain test records. Swan Decl., ¶¶ 6-13, 25. Thereafter, Abbott's counsel reneged on the agreement, and demanded that SLI produce documents to all 18 categories. Swan Decl., ¶¶ 14-16. SLI refused.

Abbott also served a subpoena to inspect SLI's facilities. Swan Decl., Ex. 7. On August 18, 2008, SLI served timely objections by mail. Swan Decl., ¶ 19, Ex. 14. Without seeing the objections, much less meeting and conferring on these objections, Abbott filed the instant motion to compel the next day. Swan Decl., ¶¶ 19-22.

Abbott's motion to compel should be denied on several grounds. Among other things, Abbott failed to meet and confer concerning all disputed issues as required by Local Civil Rule 26.1(a). Further the subpoenas are overbroad and burdensome, and seek the production of documents already produced by C&D in the Chicago case. *See* Declaration of Stephen B. Shear ("Shear Decl."). It seeks documents that Abbott agreed not to pursue until it reneged. It also seeks virtually unlimited inspection of SLI's facilities. The motion to compel should be denied.

POINTS AND AUTHORITIES

I. The Motion to Compel Should be Denied Because Abbott Failed to Meet and Confer on All Disputed Issues

Abbott failed to meet and confer "concerning all disputed issues" as required by Local Civil Rule 26.1(a). SLI timely served its objections to the inspection subpoena by mail on August 18, 2008. The next day, before it had even seen the objections, and without any attempt to meet and confer, Abbott filed the instant motion to compel. Swan Decl., ¶¶ 19-22. Based on this failure alone, Abbott's motion to compel is defective and should be denied.

Local Civil Rule 26.1(a) provides that the Court "shall entertain no motion pursuant to Rules 26 through 37 ... unless counsel have previously met and conferred concerning *all* disputed issues." (emphasis added.) Abbott brings this motion to compel pursuant to Rules 26 and 45. (See Abbott's Brief, 7:2-7.) Therefore, this Court should not entertain the motion unless counsel have met and

1 conferred concerning all disputed issues.

2 Additionally, any such motion must be accompanied by a certificate of compliance with this
 3 rule. Local Civil Rule 26.1(b). Although Abbott purportedly attached a certificate of compliance, the
 4 certificate is misleading. (Abbott's Brief, 1:17-24.) For instance, the certificate represents that Abbott
 5 corresponded with SLI by phone and in writing regarding "the disputed issues." But, counsel never
 6 corresponded in any way, and counsel made no attempts to meet and confer, regarding the subpoena
 7 seeking an inspection of SLI's premises. Swan Decl., ¶¶ 19-22. Rather, counsel met and conferred
 8 regarding only the subpoena requesting the production of documents and testimony.

9 Consequently, counsel have not met and conferred concerning all disputed issues raised by this
 10 motion as required by Local Civil Rule 26.1 and this Court should, therefore, not entertain this
 11 motion. Alternatively, the Court should not entertain the motion as to the subpoena seeking an
 12 inspection of SLI's premises as counsel did not meet and confer as to the disputed issues related to it.

13 **II. This Motion to Compel Should not be Granted Because the Subpoenas Exceed the**
 14 **Bounds of Fair Discovery and Impose an Undue Burden on SKL**

15 Rule 45 provides that, among other things, a nonparty may be compelled by subpoena to
 16 produce designated documents or to permit the inspection of premises. Rule 45(a)(1)(A)(iii). Rule
 17 26, however, imposes limits on discovery that apply to Rule 45 subpoenas. See *Concord Boat Corp.*
 18 *v. Brunswick Corp.*, 169 F.R.D. 44, 49 (S.D.N.Y. 1996); *Schaaf v. SmithKline Beecham Corp.*, 233
 19 F.R.D. 451, 453 (E.D.N.C. 2005). For instance, a court must limit discovery, even of relevant matter,
 20 if it determines that:

- 21 (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained
 22 from some other source that is more convenient, less burdensome, or less expensive;
 23 (ii) the party seeking discovery has had ample opportunity to obtain the information by
 24 discovery in the action; or (iii) the burden or expense of the proposed discovery
 25 outweighs its likely benefit, considering the needs of the case, the amount in
 26 controversy, the parties' resources, the importance of the issues at stake in the action,
 27 and the importance of the discovery in resolving the issues. Rule 26(b)(2)(C).

26 Additionally, under Rule 26(c), a court may limit discovery to "to protect a party or person from
 27 annoyance, embarrassment, oppression, or undue burden or expense."

28 ///

1 Similarly, under Rule 45, a court must quash a subpoena that “subjects a person to undue
2 burden” or “requires disclosure of privileged or other protected matter.” Rule 45(c)(3)(A)(iii)-(iv).
3 Finally, under Rule 45, a court may modify or quash a subpoena that requires “disclosing a trade
4 secret or other confidential research, development, or commercial information.” Rule 45(c)(3)(B)(i).

5 Whether a subpoena imposes an undue burden “is a specific inquiry that turns on the facts of
6 each case.” *Beinin v. Center for Study of Popular Culture*, 2007 WL 832962, *5 (N.D. Cal. 2007);
7 *Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. 1998). An “evaluation of undue burden
8 requires the court to weigh the burden to the subpoenaed party against the value of the information to
9 the serving party.” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005). Therefore, the
10 relevance of the subpoenaed information is important to whether a subpoena imposes an undue
11 burden. *Compaq Computer Corp. v. Packard Bell Electronics, Inc.*, 163 F.R.D. 329, 335 (N.D. Cal.
12 1995). Further, a witness’ status as a non-party entitles him or her to “consideration regarding
13 expense and inconvenience.” *Concord Boat*, 169 F.R.D. at 49; *see Schaaf*, 233 F.R.D. at 453. In fact,
14 the “status of the person as a nonparty is a factor that weighs against disclosure.” *Beinin* at *5.

15 Specifically, whether a documents subpoena imposes an undue burden “depends upon such
16 factors as relevance, the need of the party for the documents, the breadth of the document request, the
17 time period covered by it, the particularity with which the documents are described and the burden
18 imposed.” *Concord Boat*, 169 F.R.D. at 49; *Schaaf*, 233 F.R.D. at 453 [on motion to compel]. A
19 subpoena that is facially overbroad imposes an undue burden. *Williams*, 178 F.R.D. at 109 ; *In re*
20 *Biovail Corporation Securities*, 247 F.R.D. 72, 75 (S.D.N.Y. 2007). Requests for documents that
21 pertain to a party and that can be more easily and inexpensively be obtained from that party also
22 impose an undue burden. *Moon*, 232 F.R.D. at 638. Further, if the documents sought are neither
23 relevant nor calculated to lead to the discovery of admissible evidence, “then any burden whatsoever
24 imposed upon the non-party would be by definition undue.” *Compaq Computer Corp.*, 163 F.R.D. at
25 335-36.

26 Because entry upon a party’s premises “may entail greater burdens and risks than mere
27 production of documents, a greater inquiry into the necessity for inspection” is warranted. *Belcher v.*
28 *Bassett Furniture Ind., Inc.*, 588 F.2d 904, 908 (4th Cir. 1978) [Rule 34 subpoena]. Therefore, under

Rule 26, “the degree to which the proposed inspection will aid in the search for truth must be balanced against the burdens and dangers created by the inspection.” *Id.*; *Arkansas Game & Fish Comm. v. United States*, 74 Fed.Cl. 426, 432 (2006). Where the same information can be gained from other methods of discovery, those methods should first be engaged before resorting to an inspection of a nonparty’s premises. *See Belcher*, 588 F.2d at 909-10. Additionally, where the information sought by a Rule 45 nonparty subpoena to inspect premises is of “questionable relevance and not likely to lead to the discovery or relevant evidence,” a protective order under Rule 26 is appropriate. *Fellner v. Supreme Corp.*, 1995 WL 79787, *3 (D.N.J. 1995).

A. The Subpoena for Documents and Testimony is Objectionable on Numerous Grounds

The subpoena for documents and testimony is objectionable on numerous grounds. For instance, the 18 categories seek a broad range of documents that SLI believes is largely in the possession of C&D and that were produced by C&D in the Chicago action. *See Shear Decl.* Abbott is required to seek the documents first from C&D, and only pursue them from SLI, a non-party, if it has exhausted all attempts to secure them from C&D. Abbott has either obtained the documents already from C&D, or has failed to do that first. Therefore, the information sought by this subpoena is either duplicative or available from another source that is more convenient and less burdensome under Rule 26(b)(2)(i). Further, this subpoena imposes an undue burden on SKL under *Moon* because the documents can more easily and inexpensively be obtained from *a party*. *Moon*, 232 F.R.D. at 638.

The subpoena requests are overbroad, unduly burdensome, vague and ambiguous. Abbott has refused to limit any of the requests. *Swan Decl.*, ¶ 16. Further, the subpoena requests are unlimited in scope and/or time, or pertain to a period of time that is not relevant to the underlying action. Despite SKL’s requests to narrow the time period from 1999 to the present to a more reasonable period of the last two years, Abbott refused. *Swan Decl.*, ¶ 16. Where, as here, a subpoena is facially overbroad, it imposes an undue burden. *Williams*, 178 F.R.D. at 109.

Additionally, the subpoena seeks the production of documents containing confidential or proprietary business information of SLI. While there is apparently a protective order in place in the Chicago case, Abbott has not made any assurances that any documents produced would be protected.

1 Where a subpoena requires disclosure of trade secrets or other confidential commercial information, it
2 is appropriate for a court to protect anyone affected by the subpoena by modifying or quashing it.
3 Rule 45(c)(3)(B)(i).

4 Finally, the subpoena also seeks documents that are protected by the attorney-client or work
5 product protection. These documents are clearly not discoverable. In fact, as explained above, a court
6 must modify or quash a subpoena calling for the production of privileged documents. Rule
7 45(c)(3)(A)(iii).

8 For these reasons, this subpoena imposes an undue burden on SLI and exceeds the bounds of
9 fair discovery permitted under Rule 26(b)(2)(C) and Rule 45(c)(3). Therefore, Abbott's motion to
10 compel the subpoena for documents and testimony should be denied.

11 **B. The Inspection Subpoena is Also Objectionable on Numerous Grounds**

12 The inspection subpoena (Swan Decl., Ex. 7) is also objectionable on numerous grounds. For
13 instance, the subpoena seeks to permit Abbott to enter SLI's "plant, facilities or other premises" for
14 the "purpose of inspecting, photographing and videotaping premises, objects, product, equipment and
15 operations that concern the production, manufacture and/or assembly of any test for the diagnosis of
16 pregnancy or ovulation for or on behalf of Church & Dwight, Inc., or any component part thereof
17 (C&D Test Kits)." It further seeks to conduct such inspection, photographing and/or videotaping for
18 an unlimited period of time, and states that the inspection "shall be during an actual production run or
19 runs of commercial batches of C&D Test Kits for the detection of pregnancy and ovulation." It
20 further provides that the inspection "may be conducted by counsel for Abbott, a videographer,
21 photographer and one or more experts," none of whom are identified by name. Swan Decl., Ex. 7;
22 Declaration of Jerry Sun ("Sun Decl."), ¶ 2.

23 Therefore, the subpoena is overly broad, unduly burdensome, not reasonably calculated to the
24 discovery of admissible evidence and not relevant to any claim or defense on the grounds that the
25 asserted claims of the patents-in-suit are not directed to a method of manufacture. Instead, the
26 asserted claims are device claims and method of use claims. Where, as here, the subpoena seeks
27 information of questionable relevance and is unlikely to lead to the discovery of relevant evidence, a
28 protective order under Rule 26 is appropriate. *Fellner*, 1995 WL 79787, *3. Further, any burden

1 imposed on a nonparty in the pursuit of non-relevant evidence is by definition undue. See *Compaq*
2 *Computer Corp.*, 163 F.R.D. at 335-36. Yet here, Abbott seeks to impose a substantial burden and
3 risk on SLI by entering upon its private property and having persons of undisclosed identity videotape
4 and photograph its operations.

5 Further, SLI is informed and believes that C&D has already produced documents, including
6 SLI's documents, detailing the ingredients, components, and materials of the devices manufactured by
7 SLI for C&D as well as documents detailing the function, operation and method of use of the devices
8 manufactured by SLI for C&D. Therefore, the subpoena is also harassing in that it seeks information
9 that is cumulative and duplicative of information contained in the documents produced by C&D and
10 already in Abbott's possession. Further the subpoena is harassing in that it seeks information that is
11 cumulative and duplicative of Abbott's 30(b)(6) deposition of C&D and duplicative of information
12 requested by Abbott's prior subpoena to SLI. Accordingly, this discovery ought to be limited under
13 Rule 26(b)(2)(C). Further, Abbott ought to be required to use the information available, and that it
14 already has, under other methods of discovery before resorting to an inspection of SLI's facility.
15 *Belcher*, 588 F.2d at 909-910.

16 Additionally, the subpoena seeks "inspection, photographing and/or videotaping" of SLI's
17 "plant, facilities or other premises" where SLI manufactures product. Such "inspection,
18 photographing and/or videotaping" would unreasonably, improperly and impermissibly reveal and
19 copy SLI's trade secrets and other confidential research, development and commercial information,
20 and thereby require disclosure of privileged or other protected matter. Many manufacturing processes
21 are unique to SLI and observation by a third party, especially a third party competitor could produce a
22 competitive disadvantage. Sun Decl., ¶ 3. This should not be permitted under Rule 45(c)(3)(B)(i) as
23 discussed above.

24 The scope of the subpoena, both as to the unlimited time of the inspection and the areas to be
25 inspected, is overly broad, unduly burdensome and oppressive. The inspection sought by the
26 subpoena will unreasonably interfere and obstruct SLI's manufacturing and other operations. The
27 inspection sought by the subpoena would allow unauthorized persons into SLI's manufacturing
28 facility, presenting safety and liability issues. The production areas are clean and semi-clean rooms

1 and as such require specific preparation, clothing and other supplies that are unique and specific to
2 SLI. These areas are designed for those who are familiar with production and may be unsafe for
3 visitors. The chemicals and other production supplies require specific degrees of safety training
4 before entry is allowed. Sun Decl., ¶ 4. The inspection sought by the subpoena also seeks inspection
5 by unnamed persons. Yet, as discussed above, the information sought is, at best, of questionable
6 relevance. Simply put, the burdens and risks involved with Abbott's entry into SLI's facilities
7 outweigh the degree to which the proposed inspection could possibly aid in the search for truth.
8 *Belcher*, 588 F.2d at 908.

9 For these reasons, the motion to compel the inspection of SLI's facilities should be denied.

10 **III. SLI Ought to be Protected Against Significant Expense**

11 If the Court grants any part of Abbott's motion to compel, "the order must protect a person
12 who is neither a party nor a party's officer," such as SLI, "from significant expense resulting from
13 compliance" and must ensure that SLI "will be reasonably compensated." Rule 45(c)(2)(B)(ii); Rule
14 45(c)(3)(C). Consequently, Abbott may, and should, be ordered to pay all or part of the expenses SLI
15 reasonably incurs in complying with these subpoenas. See *In re First American Corp.*, 184 F.R.D.
16 234, 241 (S.D.N.Y. 1998).

17 The factors relevant to determining how much of the production expense Abbott ought to be
18 ordered to pay include: (1) the scope of the discovery; (2) the invasiveness of the request; (3) the
19 extent to which SLI must separate responsive information from privileged or irrelevant material; (4)
20 the reasonableness of the costs of production; (5) whether SLI has an interest in the outcome of the
21 case; (6) the relative resources of Abbott and SLI; and (7) whether this litigation is of public
22 importance. *U.S. v. Columbia Broadcasting System, Inc.*, 666 F.2d 364, 372, n.9 (9th Cir. 1982); *In re*
23 *First American Corp.*, 184 F.R.D. at 241.

24 Here, the scope of the documents Abbott seeks is expansive, not reasonably limited by time,
25 and its request is extraordinarily invasive, seeking to intrude on SLI's property to videotape and
26 photograph manufacturing processes. Further, SLI must separate responsive documents from volumes
27 of irrelevant and potentially protected commercial information belonging to unrelated customers.
28 Moreover, SLI is a small, family owned and operated business. In contrast, Abbott is a multibillion

1 dollar international conglomerate with substantial financial resources. Clearly, Abbott's resources
2 available to bear the production expense are far greater than SLI's. Finally, SLI has no interest in the
3 outcome of this litigation, nor does the public. Consequently, compliance is only beneficial to
4 Abbott's interests.

5 Therefore, considering these factors, Abbott ought to be ordered to pay all reasonable costs
6 incurred in by SLI in complying with these subpoenas.

7 **CONCLUSION**

8 Based on the foregoing, SLI respectfully requests that Abbott's motion to compel be denied. If
9 any portion is granted, SLI respectfully requests that Abbott be ordered to pay all reasonable costs
10 incurred in by SLI in complying with these subpoenas.

11 DATED: September 8, 2008 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

12
13 By: /s/ Edward Patrick Swan, Jr.
14 Edward Patrick Swan, Jr.
15 Attorneys for Third Party Scantibodies Laboratory Inc.

16 101116322.2
17
18
19
20
21
22
23
24
25
26
27
28

Edward Patrick Swan, Jr., State Bar No. 089429
Caryn M. Anderson, State Bar No. 247038
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone No.: 619.236.1414
Fax No.: 619.232.8311

Attorneys for Third Party Scantibodies Laboratory Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABBOTT LABORATORIES,

Plaintiff,

v.

SCANTIBODIES LABORATORY, INC.,

Defendant.

Case No. 08-CV-1525 H (BLM)

The Hon. Barbara L. Major

**DECLARATION OF EDWARD
PATRICK SWAN, JR. IN SUPPORT OF
THIRD PARTY SCANTIBODIES
LABORATORY INC.'S OPPOSITION TO
MOTION TO COMPEL**

Date: September 17, 2008

Time: 3:00 p.m.

I, Edward Patrick Swan, Jr. declare as follows:

1. I am a partner of the law firm of Luce Forward Hamilton & Scripps LLP, a member of the California State Bar and this Court, and I am counsel of record for third party Scantibodies Laboratory, Inc. ("SLI") in this case. I make this declaration in support of SLI's opposition to Abbott Laboratories' ("Abbott") motion to compel. Except as otherwise noted, I have personal knowledge of the following facts, and I could competently testify thereto.

2. This is not Abbott's first attempt to subpoena a large number of documents from SLI. In a prior action between Abbott and Church & Dwight Co., Inc. ("C&D"), filed in the District of New Jersey in 2005, Abbott issued a similarly overbroad document subpoena to SLI. A true and correct copy is attached as Exhibit 1. On November 30, 2006, SLI timely served objections to the

1 subpoena. A true and correct copy is attached as Exhibit 2. Abbott made no attempt to compel the
2 production of these subpoenaed documents, and no documents were produced.

3 3. Now, in a newly filed case in Chicago, Illinois, Abbott has again subpoenaed
4 documents from SLI, this time increasing the categories of documents from seven to eighteen. A true
5 and correct copy of this subpoena is attached as Exhibit 3.

6 4. On May 9, 2008, I spoke with Stephanie McCallum, attorney for Abbott, and she
7 agreed to extend our time to respond to the subpoena for seven days.

8 5. On May 20, 2008, SLI timely served its objections to the subpoena. A true and correct
9 copy of the objections is attached as Exhibit 4.

10 6. On June 3, 2008, I spoke with Kevin Warner, Abbott's counsel, by telephone.
11 Mr. Warner told me that Abbott was only interested in obtaining documents from SLI pursuant to
12 Request Nos. 10 and 11 in the subpoena. With respect to Request No. 10, he said Abbott would like
13 samples of all reagents used since 1999 that were still in existence. With respect to Request No. 11,
14 he said Abbott would like all documents relate to the testing of those reagents. I asked Mr. Warner if
15 C&D had these reagents and testing documents and could produce them, and he said he did not
16 believe so. Mr. Warner said that the other categories of documents were going to be or had been
17 obtained from C&D directly. Accordingly, we did not discuss the other categories of documents.

18 7. On June 5, 2008, I spoke with Baldo Vinti, counsel for C&D. Mr. Vinti told me that
19 C&D had and would produce the sample reagents requested in Request No. 10, and confirmed that
20 C&D had produced or would produce the other documents except for some of the testing documents
21 requested in Request No. 11.

22 8. On June 10, 2008, I received a copy of a letter from Mr. Vinti to Ms. McCallum
23 offering to ship the sample reagents to her that were requested in Request No. 10 to SLI. A true and
24 correct copy of the letter is attached as Exhibit 5.

25 9. On July 16, 2008, I spoke by telephone with Mr. Vinti. He told me was ready to
26 produce the reagent samples to Abbott, but Abbott had not gotten back to him.

27 ///

28 ///

1 10. On July 21, 2008, I received an e-mail from Mr. Warner requesting an update. This
2 was the first time I had heard from Mr. Warner since June 23, 2008, and I had assumed that he was
3 working out the document issues with C&D's counsel.

4 11. On July 24, 2008, I called Mr. Warner and left him a voicemail message to call me
5 back. I also sent him an e-mail that day stating that my understanding was that the only documents
6 Abbott was now seeking from SLI were those described in Request No. 11. I noted that there was no
7 time limitation in No. 11, making it overbroad, burdensome and oppressive. I advised Mr. Warner
8 that SLI would produce responsive documents, but we would need to have an agreed-upon time
9 limitation. I also noted that the description in Request No. 11 was also overbroad, and my
10 understanding was that the request sought documents relating to the testing of the antibodies. I told
11 him that his e-mail mentioned certifications, which is not in Request No. 11. I told him I would
12 appreciate it if he would clarify what he was requesting. A true and correct copy of my e-mail of
13 July 24, 2008 is attached as Exhibit 6.

14 12. On Friday, August 1, 2008, I received an e-mail message from Mr. Warner asking if I
15 would let him know by the close of business on Monday, August 4, 2008, whether I would accept
16 service of a new subpoena to SLI requesting an inspection of SLI's facilities on August 22, 2008.
17 Mr. Warner stated in his e-mail that he would also contact me on Monday to discuss the outstanding
18 document and deposition requests associated with the previous subpoena served on SLI. A true and
19 correct copy of Mr. Warner's August 1, 2008 e-mail and the inspection subpoena is attached as
20 Exhibit 7.

21 13. On Monday, August 4, 2008, I sent an e-mail message to Mr. Warner stating that I
22 would accept service of the new subpoena to SLI. In my e-mail, I also noted that I had not heard back
23 from him in response to my July 24, 2008 e-mail regarding the first subpoena. I told him I would
24 appreciate if he would let me know the information I requested in that e-mail. A true and correct copy
25 of my August 4, 2008 e-mail message is attached as Exhibit 8.

26 14. On August 4, 2008, I received an e-mail message from Mr. Warner thanking me for
27 agreeing to accept service of the subpoena and considering the subpoena as having been served on
28 August 4, 2008. [Note: This meant any objections were due by August 18, 2008, four days before the

1 August 22, 2008 requested inspection.] Mr. Warner then recanted his previous agreement to limit the
2 requests in the first subpoena, and stated that Abbott was not withdrawing any or all of its other
3 document requests. A true and correct copy of Mr. Warner's August 4, 2008 e-mail is attached as
4 Exhibit 9.

5 15. I was very surprised by Abbott's recantation. On August 10, 2008, I sent an e-mail
6 message to Mr. Warner telling him I was disappointed in his message, and telling them that he was
7 now attempting to renege on his prior agreement. I told him that was unacceptable. I also told him
8 that his unwillingness to include a time limitation on Request No. 11 was unreasonable. I told him it
9 ignores the fact that the product has a two-year shelf life. I told him SLI would produce responsive,
10 non-privileged documents going back two years. Finally, I told Mr. Warner that SLI's Rule 30(b)(6)
11 witness on testing would be Jerry Sun. I told him I assumed he would want to depose Mr. Sun after he
12 received the documents, and asked him what dates were available for him after August 25, 2008. A
13 true and correct copy of my August 10, 2008 e-mail is attached as Exhibit 10.

14 16. On August 11, 2008, I received an e-mail message from Mr. Warner stating that I had
15 mischaracterized our earlier conversation about Abbott's subpoena to SLI. Mr. Warner stated that he
16 was sure that I would recall that there was no specific mention whatsoever of "Topic 11" during any
17 of our previous phone conversations. This of course was not true. He further stated that he never
18 agreed to narrow the subpoena to any particular document categories and forego others. Again, this
19 was not true. A true and correct copy of Mr. Warner's August 11, 2008 e-mail is attached as
20 Exhibit 11.

21 17. On August 18, 2008, I received an e-mail message from Mr. Warner asking to let him
22 know by the end of the day whether SLI intended to permit the inspection of its facilities to go
23 forward on August 22, 2008. A true and correct copy of Mr. Warner's August 18, 2008 e-mail is
24 attached as Exhibit 12.

25 18. On August 18, 2008, I responded to Mr. Warner's e-mail message, and told him that
26 we served objections that day to the inspection subpoena and SLI would not agree to the requested
27 inspection. I asked him to let me know his thoughts after he received the objections. I also informed
28 him that I received his August 11, 2008 e-mail that came while I was on vacation. I told him that I

1 disagreed with his revisionist history and positions. A true and correct copy of my August 18, 2008
2 e-mail message is attached as Exhibit 13.

3 19. On August 18, 2008, SLI timely served its objections to Abbott's subpoena to permit
4 inspection. My assistant served the objections by mail on Ms. McCallum and Mr. Vinti that same day.
5 A true and correct copy of the objections is attached as Exhibit 14.

6 20. The next day (August 19, 2008), before Abbott received SLI's objections to Abbott's
7 subpoena to permit inspection, Abbott filed the instant motion to compel. Abbott served it on SLI on
8 August 20, 2008.

9 21. On August 28, 2008, I received an e-mail message from Mr. Warner stating that he had
10 not received SLI's objections to the inspection subpoena that I referenced in my August 18, 2008
11 e-mail, and asked that I forward a copy to him as soon as possible. A true and correct copy of
12 Mr. Warner's August 28, 2008 e-mail message is attached as Exhibit 15.


13 22. On September 2, 2008, my assistant e-mailed another copy of the objections to
14 Mr. Warner, and informed him that they were mail served to Ms. McCallum at his firm on August 18,
15 2008. A true and correct copy of her e-mail message is attached as Exhibit 16.

16 23. As part of its motion to compel, Abbott included a "Certificate of Compliance with
17 Local Rule 26.1." Abbott certified that it had met and conferred regarding the disputed issues. This is
18 not correct. Abbott never met and conferred regarding SLI's objections to the inspection subpoena. It
19 is quite clear that Abbott filed its motion to compel before even receiving SLI's objections to the
20 inspection subpoena. Since receiving the objections to the inspection subpoena, Abbott has made no
21 attempt to meet and confer regarding them.

22 24. I have read the declaration of Mr. Warner filed in support of the motion to compel. It
23 contains statements that I believe are misleading and untrue. For example, in paragraph six
24 Mr. Warner states that discovery in the Illinois action has revealed that C&D is not itself the
25 manufacturer of the accused products, and many of the accused products are manufactured in
26 California by SLI. This statement is misleading. Prior to the Illinois action, I believe Abbott knew
27 that SLI manufactured a pregnancy test kit for C&D. This belief is based on the subpoena Abbott
28 served on SLI in the New Jersey case.

26. In his declaration, Mr. Warner accuses me of “delay tactics.” I did not engage in delay tactics. My understanding was that Abbott and C&D were engaged in discussions regarding the same documents subpoenaed from SLI and the same deposition topics requested from SLI. I was waiting for a resolution of those issues.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I executed this declaration on September 8, 2008, in San Diego, California.


Edward Patrick Swan, Jr.

101116599.1

EXHIBIT 1

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHURCH & DWIGHT CO., INC.
Plaintiffs

V.

ABBOTT LABORATORIES
Defendants

SUBPOENA IN A CIVIL CASE

CASE NUMBER: ¹ 05-CV-2142 (GEB)
(For a case pending in the District of New Jersey)

TO:
Scantibodies Laboratory, Inc.
ATTN: ALLEN GARRETT, Registered Agent
9336 Abraham Way
Santee, CA 92071 USA

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Schedule A, attached

PLACE
Merrill Corporation
British Pacific Centre
8899 University Center Lane, Suite 200
San Diego, CA 92122

DATE AND TIME
November 22, 2006
10:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE
November 3, 2006

Stephanie McCallum, Esq., Attorney for Defendant Abbott Laboratories

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Stephanie McCallum, Esq., Winston & Strawn LLP, 35 W. Wacker Dr., Chicago, IL 60601

(312) 558-5600

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

EXHIBIT 1

PAGE 1 OF 6

AO 88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE		PLACE
SERVED SERVED ON (PRINT NAME) _____ MANNER OF SERVICE _____		
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (4) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in

person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an untrained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT 1

PAGE 2 OF 6

SCHEDULE A

Definitions and Instructions

1. "Scantibodies" or "you" or "your" shall mean Scantibodies Laboratory, Inc., as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf, including, but not limited to, Carter-Wallace, Inc.
2. "C&D" or "Plaintiff" shall mean Church & Dwight, Inc., the Plaintiff and Counter-Defendant in this action, as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf, including, but not limited to, Cater-Wallace, Inc.
3. "Defendant" or "Abbott" shall mean Abbott Laboratories, Defendant and Counter-Plaintiff in this action, as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf.
4. The term "Charlton Patents" shall mean U.S. Patent Nos. 5,714,389, 5,989,921 and 6,485,982.
5. The "389 patent" shall mean U.S. Patent No. 5,714,389.
6. The "921 patent" shall mean U.S. Patent No. 5,989,921.
7. The "982 patent" shall mean U.S. Patent No. 6,485,982.
8. The term "C&D Test Product" shall mean any lateral flow immunoassays, made, used, or sold by C&D since 1999.
9. The term "Scantibodies Test Product" shall mean any lateral flow immunoassays and all materials, components or ingredients of such immunoassays, made by Scantibodies for,

on behalf of, or at the request of C&D, including the C&D Test Products, and any materials, components or ingredients of the C&D Test Products.

10. "Document" shall mean any written, graphic, recorded or illustrative material of any kind or description, however produced or reproduced, and regardless of whether approved, signed, sent, received, redrafted, or executed, prepared by or for you, in your possession, custody, or control. The term "document" includes, but is not limited to, the following: correspondence, memoranda, drafts, computerized records, notes, jottings, books, lab notebooks, records, reports, surveys, studies, analyses, things, videotapes, recordings, computer disks, electronic mail, e-mail, transcriptions of verbal conversations or statements however made, business forms, labels, papers and films filed with courts or other governmental bodies, notices, messages, calendar and diary entries, appointment books, minutes and other formal or informal memoranda of meetings, and copies of documents that are not identical duplicates of the originals (e.g., because handwritten or "blind" notes appear thereon or are attached thereto).

11. "Thing" shall mean any physical specimen or tangible item other than a document.

12. "Person" shall mean any natural person, firm, association, partnership, government agency, or other entity and its officers, directors, partners, employees, representatives and agents.

13. The term "relating to" "reflecting," "referring," "relating to," or any derivation thereof shall mean, without limitation, consisting of, constituting, containing, mentioning, describing, summarizing, evidencing, listing, indicating, analyzing, explaining, supporting, undermining, contradicting, concerning, reflecting, referring to, pertaining to, prepared in

connection with, used in preparation for, or being in any way legally, logically, or factually connected with the matter discussed.

14. "Communication" shall mean or refer to all inquires, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegrams, advertisements, or other forms of information exchanged, whether oral, electronic, or written. Unless the request specifically states otherwise, references to the singular shall include the plural and vice versa; references to one gender shall include the other gender; references to the past include the present and vice versa; and disjunctive terms include the conjunctive and vice versa.

15. If you at any time had possession or control of a document requested herein and if such document has been lost, destroyed, purged, or is not presently in your possession or control, identify the document, the date of its loss, destruction, purge or separation from your possession or control, and the circumstances surrounding its loss, destruction, purge or separation from your possession or control.

16. Should you refuse, on the grounds of attorney-client privilege, work product immunity or any other privilege, to produce any document or tangible thing, then you shall provide at the time of making said refusal a list of all such non-produced documents or things. As to any such document or thing, state the following: the nature of the privilege or immunity being claimed; the number of the request calling for its production; the date of the document; the name of each person who signed or prepared the document; the name of each addressee and person to whom the document or copies thereof were given or sent; a description of the general subject matter of the document; an identification of any document or other material transmitted with or attached to the document; and the nature or character of the document or thing.

List of Documents

1. All documents relating to any agreements between Scantibodies and C&D and/or any other party relating to the manufacture of any Scantibodies Test Products or any C&D Test Products, including but not limited to any such agreements themselves.
2. All communications between Scantibodies and C&D relating to the decision to enter into, or to forgo, any agreement relating to the manufacture of any Scantibodies Test Products or any C&D Test Products.
3. All communications between Scantibodies and C&D relating to the manufacture of any Scantibodies Test Product or any C&D Test Product.
4. All documents relating to materials, ingredients or components used in the manufacture of any Scantibodies Test Products.
5. All documents relating to the manufacture by Scantibodies of any Scantibodies Test Products, including manufacturing processes, manufacturing specifications, and engineering drawings.
6. All documents relating to the design and development of any Scantibodies Test Product.
7. All documents relating to the Charlton patents, including any communications between Scantibodies C&D relating to the Charlton patents.

EXHIBIT 1

PAGE 6 OF 6

EXHIBIT 2

Edward Patrick Swan, Jr., State Bar No. 089429
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone No.: 619.699.2415
Fax No.: 619.645.5321

Attorneys for Non-Party Scantibodies Laboratory, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHURCH & DWIGHT CO., INC.,

Plaintiff,

v.

ABBOTT LABORATORIES,

Defendant.

Case No. 05-CV-2142 (GEB)
(Pending in the District of New Jersey)

**NON-PARTY SCANTIBODIES
LABORATORY, INC.'S RESPONSES
AND OBJECTIONS TO DEFENDANT
ABBOTT LABORATORIES' SUBPOENA
DUCES TECUM**

Non-party Scantibodies Laboratory, Inc. ("Scantibodies") hereby responds and objects to defendant Abbott Laboratories' ("Abbott") subpoena duces tecum dated November 3, 2006 (the "Subpoena") as follows:

GENERAL OBJECTIONS

1. Scantibodies objects that the Subpoena seeks a broad range of documents that Scantibodies believes is largely in the possession of plaintiff Church & Dwight Co., Inc. and is the subject of pending discovery requests by Abbott of Church & Dwight Co., Inc. Abbott is required to seek the documents first from Church & Dwight Co., Inc., and only pursue them from Scantibodies, a non-party, if it has exhausted all attempts to secure them from Church & Dwight Co., Inc. Accordingly, the Subpoena is premature and objectionable.

EXHIBIT 2

PAGE 1 OF 8

1 2. Scantibodies objects to the Subpoena, including the "Definitions and Instructions"
2 set forth in Schedule A thereto, to the extent it purports to impose burdens, obligations or
3 requirements on Scantibodies that are inconsistent with, or exceed the scope of, permissible
4 discovery under the Federal Rules of Civil Procedure.

5 3. Scantibodies objects to the "Definitions and Instructions" set forth in Schedule A to
6 the extent they collectively fail to describe the information requested with reasonable particularity
7 and attempt to impose obligations on Scantibodies that are not required by, or consistent with, the
8 Federal Rules of Civil Procedure.

9 4. Scantibodies objects to the "List of Documents" set forth in Schedule A (the
10 "Requests") to the extent they seek the production of documents that disclose any information,
11 materials or communications protected from disclosure by the attorney-client privilege or any
12 other applicable privileges.

13 5. Scantibodies objects to the Requests to the extent they seek the production of
14 documents containing confidential or proprietary business information.

15 6. Scantibodies objects to the Requests to the extent they seek the production of
16 documents that are not within its possession, custody or control.

17 7. Scantibodies objects to the Requests to the extent they seek the production of
18 documents that are already in the possession, custody or control of Abbott, or that are as equally
19 accessible to Abbott as they are to Scantibodies.

20 8. Scantibodies objects to the Requests to the extent they seek the production of
21 documents that are not relevant or reasonably calculated to lead to the discovery of admissible
22 evidence.

23 9. Scantibodies objects to the Requests to the extent they are unlimited in scope
24 and/or time, or pertain to a period of time that is not relevant to the underlying action.
25
26
27
28

EXHIBIT 2

10. Scantibodies objects to the Requests to the extent they seek documents that were not prepared, reviewed, sent or received by Scantibodies, and that have no connection to Scantibodies or its business.

11. Scantibodies' responses are submitted without waiving, and while specifically preserving: (a) all objections as to the competency, relevancy, materiality and admissibility of the responses or the documents produced; (b) all objections to any demand for additional production of documents; (c) the right at any time to amend or supplement the responses; and (d) the right to move to quash or modify the Subpoena, or to otherwise seek appropriate relief with regard to the Subpoena.

12. Scantibodies incorporates each of the foregoing General Objections into the following Specific Responses and Objections as if fully set forth.

SPECIFIC RESPONSES AND OBJECTIONS

REQUEST NO. 1:

All documents relating to any agreements between Scantibodies and C&D and/or any other party relating to the manufacture of any Scantibodies Test Products or any C&D Test Products, including but not limited to any such agreements themselves.

RESPONSE TO REQUEST NO. 1:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to the subpoena that it might have in its possession, custody or control.

EXHIBIT 2

PAGE 3 OF 8

1 **REQUEST NO. 2:**

2 All communications between Scantibodies and C&D relating to the decision to enter into,
3 or to forgo, any agreement relating to the manufacture of any Scantibodies Test Products or any
4 C&D Test Products.

5 **RESPONSE TO REQUEST NO. 2:**

6 Scantibodies objects to this Request on the grounds that it is overbroad, unduly
7 burdensome, vague and ambiguous, seeks production of documents that contain confidential or
8 proprietary business information, are protected by the attorney-client or work product protection,
9 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
10 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
11 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the
12 undue burden and expense of locating and producing any non-privileged documents that might be
13 responsive to the subpoena that it might have in its possession, custody or control.

14 **REQUEST NO. 3:**

15 All communications between Scantibodies and C&D relating to the manufacture of any
16 Scantibodies Test Product or any C&D Test Product.

17 **RESPONSE TO REQUEST NO. 3:**

18 Scantibodies objects to this Request on the grounds that it is overbroad, unduly
19 burdensome, vague and ambiguous, seeks production of documents that contain confidential or
20 proprietary business information, are protected by the attorney-client or work product protection,
21 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
22 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
23 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the
24 undue burden and expense of locating and producing any non-privileged documents that might be
25 responsive to the subpoena that it might have in its possession, custody or control.

26 **REQUEST NO. 4:**

27 All documents relating to materials, ingredients or components used in the manufacture of
28 any Scantibodies Test Products.

EXHIBIT 2

PAGE 4 OF 8

RESPONSE TO REQUEST NO. 4:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to the subpoena that it might have in its possession, custody or control.

REQUEST NO. 5:

All documents relating to the manufacture by Scantibodies of any Scantibodies Test Products, including manufacturing processes, manufacturing specifications, and engineering drawings.

RESPONSE TO REQUEST NO. 5:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to the subpoena that it might have in its possession, custody or control.

REQUEST NO. 6:

All documents relating to the design and development of any Scantibodies Test Product.

RESPONSE TO REQUEST NO. 6:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection,

EXHIBIT 2

1 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
2 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
3 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the
4 undue burden and expense of locating and producing any non-privileged documents that might be
5 responsive to the subpoena that it might have in its possession, custody or control.

6 **REQUEST NO. 7:**

7 All documents relating to the Charlton patents, including any communications between
8 Scantibodies C&D relating to the Charlton patents.

9 **RESPONSE TO REQUEST NO. 7:**

10 Scantibodies objects to this Request on the grounds that it is overbroad, unduly
11 burdensome, vague and ambiguous, seeks production of documents that contain confidential or
12 proprietary business information, are protected by the attorney-client or work product protection,
13 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
14 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
15 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the
16 undue burden and expense of locating and producing any non-privileged documents that might be
17 responsive to the subpoena that it might have in its possession, custody or control.

18 DATED: November 29, 2006 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

19
20 By: Edward P. Swan, Jr.
21 Edward Patrick Swan, Jr.
22 Attorneys for Scantibodies Laboratory, Inc.

23 3765035.1
24
25
26
27
28

EXHIBIT 2

PAGE 6 OF 8

CERTIFICATE OF SERVICE

Church & Dwight v. Abbott Laboratories
U.S. District Court, Southern District of California
Case No. 05-CV2142 (GEB) (Pending in the District of New Jersey)

I am employed with the law firm of Luce, Forward, Hamilton & Scripps LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101-3372. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service; I am over the age of eighteen years, and am not a party to this action.

On November 30, 2006, I served the following:

**NON-PARTY SCANTIBODIES LABORATORY, INC.'S RESPONSES AND
OBJECTIONS TO DEFENDANT ABBOTT LABORATORIES' SUBPOENA
DUCES TECUM**

on the below parties in this action by placing a true copy (copies) thereof in a separate envelope(s), addressed as shown, for collection and mailing on the below indicated day pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business:

Stephanie McCallum, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Attorneys for Defendant Abbott Laboratories

Judson L. Hand, Esq.
Proskauer Rose LLP
One Newark Center, 18th Floor
Newark, NJ 07102
Attorneys for Church & Dwight Co., Inc.

EXHIBIT 2

PAGE 7 OF 8

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at San Diego, California on November 30, 2006.

Dorene Charles
Dorene Charles

3763069.1

EXHIBIT 2

PAGE 8 OF 8

EXHIBIT 3

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

ABBOTT LABORATORIES et al.
 Plaintiffs

V.

CHURCH & DWIGHT CO., INC.
 Defendants

SUBPOENA IN A CIVIL CASE

CASE NUMBER: ¹ 07-CV-3428 (MFK)
 (For a case pending in the Northern District of Illinois)

TO:
 Scantibodies Laboratory, Inc.
 ATTN: ALLEN GARRETT, Registered Agent
 9336 Abraham Way
 Santee, CA 92071 USA

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME
 May 23, 2008
 9:00 a.m.

See the attached notice of deposition and Exhibit A, pursuant to Federal Rule of Civil Procedure 30(b)(6)

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Schedule B, attached

PLACE

Merrill Corporation
 British Pacific Centre
 8899 University Center Lane, Suite 200
 San Diego, CA 92122

DATE AND TIME
 May 12, 2008
 10:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

April 25, 2008

Stephanie S. McCallum, Esq., Attorney for Defendant Abbott Laboratories

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Stephanie S. McCallum, Esq., Winston & Strawn LLP, 35 W. Wacker Dr., Chicago, IL 60601

(312) 558-5600

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

EXHIBIT 3

AO 88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in

person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT 3PAGE 2 OF 16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

_____	X
ABBOTT LABORATORIES	:
and	:
SURMODICS, INC., (involuntary plaintiff),	: Honorable Matthew Kennelly, U.S.D.J.
	:
Plaintiffs,	: Case No. 07 CV 3428
	:
v.	:
	:
	:
CHURCH & DWIGHT CO., INC.,	:
	:
Defendant.	:
_____	X

RULE 30(b)(6) NOTICE OF DEPOSITION TO
SCANTIBODIES LABORATORY, INC.

TO: James Shalek
Baldassare Vinti
Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299

Glen P. Belvis
Anastasia Heffner
BRINKS, HOFER, GILSON & LIONE
NBC Tower, Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611-5599

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Abbott Laboratories, by and through its attorneys, hereby gives notice of its intention to take the deposition of Scantibodies Laboratory, Inc. ("Scantibodies"), on Friday, May 23, 2008, commencing at 9:00 a.m. at the offices of Esquire Deposition Services, 402 W. Broadway, San Diego, CA 92101, or at such other time and place as may be agreed to among counsel. The deposition will be taken before a notary public or other officer authorized to administer the oath

under law, and will continue day to day until completed with adjournments as to time and place that may be necessary. The deposition may be recorded by videographic and/or stenographic means.

Abbott also announces its intention, pursuant to Rule 30(b)(6), to examine Scantibodies on the particular subject matters set forth in Exhibit A, which is attached hereto. Pursuant to Rule 30(b)(6), Scantibodies has a duty to designate one or more officers, directors, managing agents or other persons who consent to testify on its behalf and, for each person designated, must identify the particular subject matters on which each designated person will testify.

Additionally, pursuant to Rules 30(b)(2) and 34, Scantibodies also is requested to produce at the deposition all documents requested to be identified in a Deposition Topic listed in Exhibit A, and any additional documents listed in Exhibit B attached hereto.

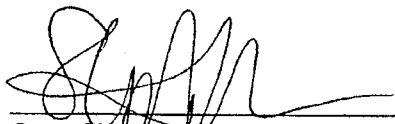
If counsel for Defendant has any questions regarding this Notice, you are invited to contact counsel for Plaintiff Abbott Laboratories to discuss this matter.

Dated: April 25, 2008

Respectfully submitted,

ABBOTT LABORATORIES

By:


One of its Attorneys

George C. Lombardi
Raymond Perkins
Stephanie McCallum
Kevin Warner
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601
(312) 558-5600
(312) 558-5700 - fax

Attorneys for Plaintiff Abbott Laboratories

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 25, 2008, I have caused a true and accurate copy of Abbott Laboratories' Rule 30(b)(6) Notice of Deposition To Defendant Church & Dwight Co., Inc. to be delivered by the method indicated on the following:

BY E-MAIL AND U.S. MAIL:

Glen P. Belvis
Anastasia Heffner
BRINKS, HOFER, GILSON & LIONE
NBC Tower, Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611-5599

BY E-MAIL AND U.S. MAIL:

James H. Shalek
Baldassare Vinti
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036-8299
212.969.2900 (fax)

BY EMAIL AND U.S. MAIL

Cyrus A. Morton
Jake M. Holdreith
Trevor J. Foster
Robins Kaplan Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402

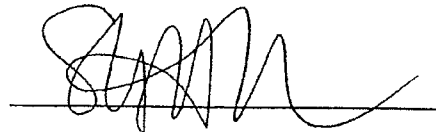
A handwritten signature in black ink, appearing to be "SMM", written over a horizontal line.

EXHIBIT A

I. DEFINITIONS

1. "Scantibodies" or "you" or "your" shall mean Scantibodies Laboratory, Inc., as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf, including, but not limited to, Church & Dwight Co., Inc., Carter-Wallace, Inc. and Armkel LLC.

2. "C&D" or "Defendant" shall mean Church & Dwight, Co., Inc., the Defendant and Counterclaimant in this action, as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf, including, but not limited to, Carter-Wallace, Inc. and Armkel LLC.

3. "Plaintiff" or "Abbott" shall mean Abbott Laboratories, Plaintiff in this action, as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf.

4. "C&D Test Kit" shall mean any diagnostic product that is used to test for the presence and/or quantity of a ligand and was manufactured in whole or in part by Scantibodies on behalf of C&D and sold or otherwise delivered to C&D for resale, including but not limited to, any pregnancy and ovulation tests manufactured, made, used or sold by or on behalf of C&D from 1999 to the present such as the pregnancy and ovulation predictor tests sold to consumers with the label First Response, Answer or Answer Quick & Simple.

5. "Document" shall mean any written, graphic, recorded or illustrative material of any kind or description, however produced or reproduced, and regardless of whether approved, signed, sent, received, redrafted, or executed, prepared by or for you, in your possession, custody, or control. The term "document" includes, but is not limited to, the following: correspondence, memoranda, drafts, computerized records, notes, jottings, books, lab notebooks,

records, reports, surveys, studies, analyses, things, videotapes, recordings, computer disks, electronic mail, e-mail, transcriptions of verbal conversations or statements however made, business forms, labels, papers and films filed with courts or other governmental bodies, notices, messages, calendar and diary entries, appointment books, minutes and other formal or informal memoranda of meetings, and copies of documents that are not identical duplicates of the originals (e.g., because handwritten or "blind" notes appear thereon or are attached thereto).

6. "Thing" shall mean any physical specimen or tangible item other than a document.

7. "Person" shall mean any natural person, firm, association, partnership, government agency, or other entity and its officers, directors, partners, employees, representatives and agents.

8. The term "relating to" "reflecting," "referring," "relating to," or any derivation thereof shall mean, without limitation, consisting of, constituting, containing, mentioning, describing, summarizing, evidencing, listing, indicating, analyzing, explaining, supporting, undermining, contradicting, concerning, reflecting, referring to, pertaining to, prepared in connection with, used in preparation for, or being in any way legally, logically, or factually connected with the matter discussed.

9. "Communication" shall mean or refer to all inquires, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegrams, advertisements, or other forms of information exchanged, whether oral, electronic, or written. Unless the request specifically states otherwise, references to the singular shall include the plural and vice versa; references to one gender shall include the other gender; references to the past include the present and vice versa; and disjunctive terms include the conjunctive and vice versa.

10. If you at any time had possession or control of a document requested herein and if such document has been lost, destroyed, purged, or is not presently in your possession or control, identify the document, the date of its loss, destruction, purge or separation from your possession or control, and the circumstances surrounding its loss, destruction, purge or separation from your possession or control.

11. Should you refuse, on the grounds of attorney-client privilege, work product immunity or any other privilege, to produce or testify about any document or tangible thing, then you shall provide at the time of making said refusal a list of all such non-produced documents or things. As to any such document or thing, state the following: the nature of the privilege or immunity being claimed; the number of the request calling for its production; the date of the document; the name of each person who signed or prepared the document; the name of each addressee and person to whom the document or copies thereof were given or sent; a description of the general subject matter of the document; an identification of any document or other material transmitted with or attached to the document; and the nature or character of the document or thing.

12. The "SurModics Patents" shall mean U.S. Patent Nos. 5,654,162, and 6,020,147.

13. The "'162 patent" shall mean U.S. Patent No. 5,654,162.

14. The "'147 patent" shall mean U.S. Patent No. 6,020,147.

15. The term "Patents-in-Suit" shall mean the SurModics Patents.

16. The "Asserted Claims" shall mean claims 1, 7, 9, 10, 16, 17, 19, 20, 22, 28, and 29 of the '162 patent and claims 1, 5, 6, 7, 11 and 12 of the '147 patent. Discovery still is in its early stages and Abbott reserves the right to assert additional claims as it receives additional information and discovery about C&D's products.

EXHIBIT 3

PAGE 8 OF 16

II. DEPOSITION TOPICS

1. The manufacture, location of manufacture, structure, method of operation, components, ingredients and materials of C&D Test Kit, including but not limited to, the antibodies used in each such test; the release, resuspension, or dispersion of labeled antibodies when contacted by a liquid sample; the amount of such antibodies and reagents used to manufacture the C&D Test Kits; the binding of an analyte to a labeled reagent; all immunoassay reactions, chemical reactions, antibody reactions, and analyte reactions; the application, immobilization and mobilization of antibodies on or in a test strip; the detection of a test result; and any and all internal controls for quality, function, operation or detection.

2. The use, composition, function and properties (including binding properties) of biotin, avidin, streptavidin and/or NeutrAvidin in each C&D Test Kit, and all tests, analyses and evaluations concerning the biotin, avidin, streptavidin and/or NeutrAvidin used in the test kit.

3. The use, composition, function and properties (including binding properties) of antibodies in each C&D Test Kit, including but not limited to antibodies designated as 2B2, B109, LH 26, 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 5304, and all tests, analyses and evaluations concerning any or all of those antibodies.

4. The research, design, development, and testing of each C&D Test Kit.

5. The identification of documents sufficient to describe the manufacture, location of manufacture, structure, method of operation, components, ingredients, nature and property of each ingredient or component used, and materials used in the manufacture and production of each C&D Test Kit. The authenticity and business record status of any such document identified.

6. Identification of documents and samples sufficient to show each model and/or version of each C&D Test Kit as used by Scantibodies. The authenticity and business record status of any document or sample identified.

7. The circumstances by which Scantibodies became aware of the Patents-in-Suit or any related patent, patent application, or foreign counterparts, and all communications by or between Scantibodies and C&D, and/or any other third party, regarding the Patents-in-Suit, including for each patent or application, the earliest date by which Scantibodies became aware of the patent or application, any actions that Scantibodies took or that others took on behalf of Scantibodies after Scantibodies first became aware of the patent or application; and the identity of all persons who became aware of the patent or application, or took actions by or on behalf of Scantibodies after Scantibodies became aware of the patent or application, including but not limited to what actions were taken.

8. All communications with C&D regarding, relating to and/or concerning the Patents in Suit.

9. All attempts, efforts or actions that C&D, Scantibodies, and/or others took on its behalf to design around the claims of the Patents-in-Suit.

10. All opinions of counsel (oral or written) requested and/or received by Scantibodies relating to the Patents-in-Suit, including who provided the opinions, when the opinions were received, to whom the opinions were given, the substance of the opinions, and any actions C&D took as a result of those opinions.

11. Scantibodies's knowledge of, possession of, study of, testing of, and other activities related to any test kit sold by Abbott Laboratories used to diagnose pregnancy.

12. For C&D Test Kits manufactured by Scantibodies in whole or in part and sold or otherwise delivered to C&D from 1999 to the present, the number of units sold on a monthly and

annual basis, total sales figures, including gross sales income on a monthly and annual basis, the costs associated with the sales, including any amounts paid as royalties or licensing fees, the amount of profits attributable to the sales, and how profit related to those sales is calculated.

13. The identification of documents sufficient to show the information requested in Request No. 12 and the authenticity and business record status of such documents.

14. Any agreement between C&D and Scantibodies regarding indemnification in connection with third party patent for the manufacture and/or sale of the C&D test Kits, including but not limited to communications between C&D and Scantibodies concerning any such agreement.

SCHEDULE B

Definitions and Instructions

1. "Scantibodies" or "you" or "your" shall mean Scantibodies Laboratory, Inc., as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf, including, but not limited to, Church & Dwight Co., Inc., Carter-Wallace, Inc. and Armkel LLC.

2. "C&D" or "Defendant" shall mean Church & Dwight, Co., Inc., the Defendant and Counterclaimant in this action, as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf, including, but not limited to, Carter-Wallace, Inc. and Armkel LLC.

3. "Plaintiff" or "Abbott" shall mean Abbott Laboratories, Plaintiff in this action, as well as its predecessors, successors, subsidiaries, parent companies, agents, representatives, partners, employees, affiliates or persons purporting to act on its behalf.

4. "C&D Test Kit" shall mean any diagnostic product that is used to test for the presence and/or quantity of a ligand and was manufactured in whole or in part by Scantibodies on behalf of C&D and sold or otherwise delivered to C&D for resale, including but not limited to, any pregnancy and ovulation tests manufactured, made, used or sold by or on behalf of C&D from 1999 to the present such as the pregnancy and ovulation predictor tests sold with the label First Response, Answer or Answer Quick & Simple.

5. "Document" shall mean any written, graphic, recorded or illustrative material of any kind or description, however produced or reproduced, and regardless of whether approved, signed, sent, received, redrafted, or executed, prepared by or for you, in your possession, custody, or control. The term "document" includes, but is not limited to, the following:

correspondence, memoranda, drafts, computerized records, notes, jottings, books, lab notebooks, records, reports, surveys, studies, analyses, things, videotapes, recordings, computer disks, electronic mail, e-mail, transcriptions of verbal conversations or statements however made, business forms, labels, papers and films filed with courts or other governmental bodies, notices, messages, calendar and diary entries, appointment books, minutes and other formal or informal memoranda of meetings, and copies of documents that are not identical duplicates of the originals (e.g., because handwritten or "blind" notes appear thereon or are attached thereto).

6. "Thing" shall mean any physical specimen or tangible item other than a document.

7. "Person" shall mean any natural person, firm, association, partnership, government agency, or other entity and its officers, directors, partners, employees, representatives and agents.

8. The term "relating to" "reflecting," "referring," "relating to," or any derivation thereof shall mean, without limitation, consisting of, constituting, containing, mentioning, describing, summarizing, evidencing, listing, indicating, analyzing, explaining, supporting, undermining, contradicting, concerning, reflecting, referring to, pertaining to, prepared in connection with, used in preparation for, or being in any way legally, logically, or factually connected with the matter discussed.

9. "Communication" shall mean or refer to all inquires, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegrams, advertisements, or other forms of information exchanged, whether oral, electronic, or written. Unless the request specifically states otherwise, references to the singular shall include the plural and vice versa; references to one gender shall include the other gender; references to the past include the present and vice versa; and disjunctive terms include the conjunctive and vice versa.

10. If you at any time had possession or control of a document requested herein and if such document has been lost, destroyed, purged, or is not presently in your possession or control, identify the document, the date of its loss, destruction, purge or separation from your possession or control, and the circumstances surrounding its loss, destruction, purge or separation from your possession or control.

11. Should you refuse, on the grounds of attorney-client privilege, work product immunity or any other privilege, to produce any document or tangible thing, then you shall provide at the time of making said refusal a list of all such non-produced documents or things. As to any such document or thing, state the following: the nature of the privilege or immunity being claimed; the number of the request calling for its production; the date of the document; the name of each person who signed or prepared the document; the name of each addressee and person to whom the document or copies thereof were given or sent; a description of the general subject matter of the document; an identification of any document or other material transmitted with or attached to the document; and the nature or character of the document or thing.

12. The "SurModics Patents" shall mean U.S. Patent Nos. 5,654,162, and 6,020,147.

13. The "'162 patent" shall mean U.S. Patent No. 5,654,162.

14. The "'147 patent" shall mean U.S. Patent No. 6,020,147.

15. The term "Patents-in-Suit" shall mean the SurModics Patents.

16. The "Asserted Claims" shall mean claims 1, 7, 9, 10, 16, 17, 19, 20, 22, 28, and 29 of the '162 patent and claims 1, 5, 6, 7, 11 and 12 of the '147 patent. Discovery still is in its early stages and Abbott reserves the right to assert additional claims as it receives additional information and discovery about C&D's products.

List of Documents

1. All documents and things relating to any agreements between Scantibodies and C&D and/or any other party relating to the manufacture of any C&D Test Kit, including but not limited to any such agreements themselves.
2. All documents and things relating to any obligation by Scantibodies to indemnify or otherwise reimburse or contribute to payment by C&D of any damages awarded to Abbott as a result of C&D's alleged infringement of the Patents-In-Suit.
3. All documents and things relating to any obligation by C&D to indemnify or otherwise reimburse or contribute to payment by Scantibodies of any damages awarded to Abbott as a result of C&D's alleged infringement of the Patents-In-Suit.
4. All communications between Scantibodies and C&D relating to the decision to enter into, or to forgo, any agreement relating to the manufacture of any C&D Test Kit.
5. All communications between Scantibodies and C&D relating to the manufacture of any C&D Test Kit.
6. All documents relating to materials, ingredients or components used in the manufacture of any C&D Test Kit.
7. All documents relating to the manufacture by Scantibodies of any C&D Test Kit, including manufacturing processes, manufacturing specifications, raw materials specifications, and engineering drawings.
8. All documents relating to the design and development of any C&D Test Kit.
9. All documents and things relating to and/or referring to any antibody used in the C&D Test Kit including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.
10. Samples of each of the antibodies used in the C&D test kits from 1999 to the present, including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.
11. All tests, analyses, evaluations and/or documents referring to, relating to and/or performed with each of the antibodies used in the C&D Test Kits, including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.
12. All documents and things relating to and/or referring to the binding capabilities of each of the antibodies used in the C&D Test Kits, including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.
13. Samples of the streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

14. All documents and things relating to and/or referring to the streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

15. All tests, analysis, evaluations and/or documents referring to, relating to and/or performed with the streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

16. All documents and things relating to and/or referring to the binding capabilities of the streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

17. All documents and things relating to the amount of each of the antibodies used in the C&D Test Kits, including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.

18. All documents and things relating to the amount of streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

EXHIBIT 4

Edward Patrick Swan, Jr., State Bar No. 089429
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone No.: 619.699.2415
Fax No.: 619.645.5321

Attorneys for Non-Party Scantibodies Laboratory, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABBOTT LABORATORIES,
Plaintiff,
v.
CHURCH & DWIGHT CO., INC.,
Defendant.

Case No. 07-CV-3428 (MFK)
(Pending in the Northern District of Illinois)

**NON-PARTY SCANTIBODIES
LABORATORY, INC.'S RESPONSES
AND OBJECTIONS TO PLAINTIFF
ABBOTT LABORATORIES' SUBPOENA
DUCES TECUM**

Non-party Scantibodies Laboratory, Inc. ("Scantibodies") hereby responds and objects to plaintiff Abbott Laboratories' ("Abbott") subpoena duces tecum dated April 25, 2008 (the "Subpoena") as follows:

GENERAL OBJECTIONS

1. Scantibodies objects that the Subpoena seeks a broad range of documents that Scantibodies believes is largely in the possession of defendant Church & Dwight Co., Inc. and is the subject of pending discovery requests by Abbott of Church & Dwight Co., Inc. Abbott is required to seek the documents first from Church & Dwight Co., Inc., and only pursue them from Scantibodies, a non-party, if it has exhausted all attempts to secure them from Church & Dwight Co., Inc. Accordingly, the Subpoena is premature and objectionable.

2. Scantibodies objects to the Subpoena, including the "Definitions and Instructions" set forth in Schedule B thereto, to the extent it purports to impose burdens, obligations or

EXHIBIT 4

1 requirements on Scantibodies that are inconsistent with, or exceed the scope of, permissible
2 discovery under the Federal Rules of Civil Procedure.

3 3. Scantibodies objects to the "Definitions and Instructions" set forth in Schedule B to
4 the extent they collectively fail to describe the information requested with reasonable particularity
5 and attempt to impose obligations on Scantibodies that are not required by, or consistent with, the
6 Federal Rules of Civil Procedure.

7 4. Scantibodies objects to the "List of Documents" set forth in Schedule B (the
8 "Requests") to the extent they seek the production of documents that disclose any information,
9 materials or communications protected from disclosure by the attorney-client privilege or any
10 other applicable privileges.

11 5. Scantibodies objects to the Requests to the extent they seek the production of
12 documents containing confidential or proprietary business information.

13 6. Scantibodies objects to the Requests to the extent they seek the production of
14 documents that are not within its possession, custody or control.

15 7. Scantibodies objects to the Requests to the extent they seek the production of
16 documents that are already in the possession, custody or control of Abbott, or that are as equally
17 accessible to Abbott as they are to Scantibodies.

18 8. Scantibodies objects to the Requests to the extent they seek the production of
19 documents that are not relevant or reasonably calculated to lead to the discovery of admissible
20 evidence.

21 9. Scantibodies objects to the Requests to the extent they are unlimited in scope
22 and/or time, or pertain to a period of time that is not relevant to the underlying action.

23 10. Scantibodies objects to the Requests to the extent they seek documents that were
24 not prepared, reviewed, sent or received by Scantibodies, and that have no connection to
25 Scantibodies or its business.

26 ///

EXHIBIT 4

27 ///

PAGE 2 OF 13

28 ///

11. Scantibodies' responses are submitted without waiving, and while specifically preserving: (a) all objections as to the competency, relevancy, materiality and admissibility of the responses or the documents produced; (b) all objections to any demand for additional production of documents; (c) the right at any time to amend or supplement the responses; and (d) the right to move to quash or modify the Subpoena, or to otherwise seek appropriate relief with regard to the Subpoena.

12. Scantibodies incorporates each of the foregoing General Objections into the following Specific Responses and Objections as if fully set forth, and specifically reserves any and all objections to the Subpoena.

SPECIFIC RESPONSES AND OBJECTIONS

REQUEST NO. 1:

All documents and things relating to any agreements between Scantibodies and C&D and/or any other party relating to the manufacture of any C&D Test Kit, including but not limited to any such agreements themselves.

RESPONSE TO REQUEST NO. 1:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 2:

All documents and things relating to any obligation by Scantibodies to indemnify or otherwise reimburse or contribute to payment by C&D of any damages awarded to Abbott as a result of C&D's alleged infringement of the Patents-In-Suit. EXHIBIT 4

///

PAGE 3 OF 13

RESPONSE TO REQUEST NO. 2:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 3:

All documents and things relating to any obligation by C&D to indemnify or otherwise reimburse or contribute to payment by Scantibodies of any damages awarded to Abbott as a result of C&D's alleged infringement of the Patents-in-Suit.

RESPONSE TO REQUEST NO. 3:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 4:

All communications between Scantibodies and C&D relating to the decision to enter into, or to forgo, any agreement relating to the manufacture of any C&D Test Kit. EXHIBIT 4

RESPONSE TO REQUEST NO. 4:PAGE 4 OF 13

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or

1 proprietary business information, are protected by the attorney-client or work product protection,
 2 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
 3 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
 4 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the
 5 undue burden and expense of locating and producing any non-privileged documents that might be
 6 responsive to this Request that it might have in its possession, custody or control.

7 **REQUEST NO. 5:**

8 All communications between Scantibodies and C&D relating to the manufacture of any
 9 C&D Test Kit.

10 **RESPONSE TO REQUEST NO. 5:**

11 Scantibodies objects to this Request on the grounds that it is overbroad, unduly
 12 burdensome, vague and ambiguous, seeks production of documents that contain confidential or
 13 proprietary business information, are protected by the attorney-client or work product protection,
 14 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
 15 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
 16 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the
 17 undue burden and expense of locating and producing any non-privileged documents that might be
 18 responsive to this Request that it might have in its possession, custody or control.

19 **REQUEST NO. 6:**

20 All documents relating to materials, ingredients or components used in the manufacture of
 21 any C&D Test Kit.

EXHIBIT 4

22 **RESPONSE TO REQUEST NO. 6:**

PAGE 5 OF 13

23 Scantibodies objects to this Request on the grounds that it is overbroad, unduly
 24 burdensome, vague and ambiguous, seeks production of documents that contain confidential or
 25 proprietary business information, are protected by the attorney-client or work product protection,
 26 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
 27 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
 28 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the

undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 7:

All documents relating to the manufacture by Scantibodies of any C&D Test Kit, including manufacturing processes, manufacturing specifications, raw materials specifications, and engineering drawings.

RESPONSE TO REQUEST NO. 7:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 8:

All documents relating to the design and development of any C&D Test Kit.

RESPONSE TO REQUEST NO. 8:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

///

EXHIBIT 4

///

PAGE 6 OF 13

REQUEST NO. 9:

All documents and things relating to and/or referring to any antibody used in the C&D Test Kit including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.

RESPONSE TO REQUEST NO. 9:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 10:

Samples of each of the antibodies used in the C&D test kits from 1999 to the present, including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.

RESPONSE TO REQUEST NO. 10:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of materials that contain or are confidential or proprietary business information, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

///

///

EXHIBIT 4PAGE 7 OF 13

REQUEST NO. 11:

All tests, analyses, evaluations and/or documents referring to, relating to and/or performed with each of the antibodies used in the C&D Test Kits, including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.

RESPONSE TO REQUEST NO. 11:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 12:

All documents and things relating to and/or referring to the binding capabilities of each of the antibodies used in the C&D Test Kits, including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.

RESPONSE TO REQUEST NO. 12:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of materials that contain or are confidential or proprietary business information, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

///

///

EXHIBIT 4PAGE 8 OF 13

REQUEST NO. 13:

Samples of the streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

RESPONSE TO REQUEST NO. 13:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 14:

All documents and things relating to and/or referring to the streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

RESPONSE TO REQUEST NO. 14:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 15:

All tests, analysis, evaluations and/or documents referring to, relating to and/or performed with the streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

///

EXHIBIT 4

///

PAGE 9 OF 13

RESPONSE TO REQUEST NO. 15:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 16:

All documents and things relating to and/or referring to the binding capabilities of the streptavidin, avidin and/or NeutrAvidin used in the C&D Test Kits.

RESPONSE TO REQUEST NO. 16:

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or proprietary business information, are protected by the attorney-client or work product protection, and are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Unless and until Abbott is unable to obtain the requested documents from plaintiff Church & Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the undue burden and expense of locating and producing any non-privileged documents that might be responsive to this Request that it might have in its possession, custody or control.

REQUEST NO. 17:

All documents and things relating to the amount of each of the antibodies used in the C&D Test Kits, including but not limited to 11D6-2B10, CCF01, FSH132, 057-10036, HCG5F6, 2B2, B109, LH 26 and 5304.

EXHIBIT 4**RESPONSE TO REQUEST NO. 17:**PAGE 10 OF 13

Scantibodies objects to this Request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous, seeks production of documents that contain confidential or

1 proprietary business information, are protected by the attorney-client or work product protection,
2 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
3 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
4 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the
5 undue burden and expense of locating and producing any non-privileged documents that might be
6 responsive to this Request that it might have in its possession, custody or control.

7 **REQUEST NO. 18:**

8 All documents and things relating to the amount of streptavidin, avidin and/or NeutrAvidin
9 used in the C&D Test Kits.


10 **RESPONSE TO REQUEST NO. 18:**

11 Scantibodies objects to this Request on the grounds that it is overbroad, unduly
12 burdensome, vague and ambiguous, seeks production of documents that contain confidential or
13 proprietary business information, are protected by the attorney-client or work product protection,
14 and are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
15 Unless and until Abbott is unable to obtain the requested documents from plaintiff Church &
16 Dwight Co., Inc. through discovery in the underlying case, Scantibodies objects to being put to the
17 undue burden and expense of locating and producing any non-privileged documents that might be
18 responsive to this Request that it might have in its possession, custody or control.

19
20 DATED: May 1st, 2008

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

21
22 By:


Edward Patrick Swan, Jr.
Attorneys for Scantibodies Laboratory, Inc.

23
24 101092466.1

25 EXHIBIT 4

26 PAGE 11 OF 13

CERTIFICATE OF SERVICE

Abbott Laboratories v. Church & Dwight Co., Inc.
U.S. District Court, Southern District of California
Case No. 07-CV-3428 (MFK) (Pending in the Northern District of Illinois)

I am employed with the law firm of Luce, Forward, Hamilton & Scripps LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101-3372. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service; I am over the age of eighteen years, and am not a party to this action.

On May 20, 2008, I served the following:

**NON-PARTY SCANTIBODIES LABORATORY, INC.'S RESPONSES AND
OBJECTIONS TO PLAINTIFF ABBOTT LABORATORIES' SUBPOENA
DUCES TECUM**

on the below parties in this action by placing a true copy (copies) thereof in a separate envelope(s), addressed as shown, for collection and mailing on the below indicated day pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business:

Stephanie McCallum, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Attorneys for Abbott Laboratories

Baldo Vinti, Esq.
Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
Attorneys for Church & Dwight Co., Inc.

EXHIBIT 4
PAGE 12 OF 13

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at San Diego, California on May 20, 2008.



Dorene Charles

101094881.1

EXHIBIT 4

PAGE 13 OF 13

EXHIBIT 5

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299
Telephone 212.969.3000
Fax 212.969.2900

BOCA RATON
BOSTON
CHICAGO
LONDON
LOS ANGELES
NEW ORLEANS
NEWARK
PARIS
SÃO PAULO
WASHINGTON

Baldassare Vinti
Senior Counsel

Direct Dial 212.969.3249
bvinti@proskauer.com

June 10, 2008

By Electronic and U.S. Mail

Stephanie McCallum, Esq.
Kevin E. Warner, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, Illinois 60601-9703

Re: Abbott Laboratories and SurModics, Inc. v. Church & Dwight Co., Inc.
Case No. 07-CV-3428 (MFK)(NRN)

Dear Stephanie and Kevin:

I write with respect to the shipment of the samples requested by Abbott Laboratories' Second Set of Document Requests. In order to maintain the integrity of the samples, the samples need to be sent in a frozen state. We advise sending them directly to an outside laboratory designated by Abbott Laboratories to avoid any spoilage. Please let me know the name and address of the outside laboratory to which to send the samples. Because Church & Dwight Co., Inc. designates the samples as Confidential Level II, please provide us with the signed undertaking (Exhibit A to the Protective Order) of the outside laboratory.

Please contact me with any questions.

Very truly yours,



Baldassare Vinti

cc: Edward P. Swan, Esq.

EXHIBIT 5

PAGE 1 OF 1

EXHIBIT 6

Swan, Pat

From: Swan, Pat
Sent: Thursday, July 24, 2008 10:44 AM
To: 'Warner, Kevin E.'
Cc: Swan, Pat
Subject: RE: Abbott Labs. v. Church & Dwight - subpoena

Dear Kevin,

I called and left you a message to call me back.

As I understand it, the only documents you are seeking from SLI are those described in no. 11 of the List of Documents attached to the subpoena. Unfortunately, there is no time limitation in no. 11, making it overbroad, burdensome and oppressive. We will produce responsive documents, but we need to have an agreed-upon time limitation. The description in no. 11 is also overbroad. Based on our communications, I understand that the request seeks documents relating to the testing of the antibodies. Your e-mail below also mentions certifications, which is not in no. 11. I would appreciate it if you would clarify what you are requesting.

Thanks, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Monday, July 21, 2008 8:31 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.; Perkins, Ray; Warner, Kevin E.
Subject: RE: Abbott Labs. v. Church & Dwight - subpoena

Pat-

I have not received any response to the below e-mail, or to my voice mail of last week regarding the same.

Please immediately identify the witness(es) Scantibodies will present for deposition, and provide all available dates in August for that deposition. We request that information by Thursday, July 24. Please also immediately produce all documents we have previously discussed, including but not limited to all documents related to testing and certification of the reagents used in the accused products manufactured for Church & Dwight. We ask that you provide those documents to us no later than Friday, July 25th. If you do not intend to meet those deadlines, please advise us of your availability on Thursday, July 24, for a meet and confer conference regarding these issues.

We look forward to your response, and please do not hesitate to contact me with any questions.

Regards,
Kevin

Kevin E. Warner

EXHIBIT 6
PAGE 1 OF 2

9/5/2008

Associate

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com



From: Warner, Kevin E.
Sent: Monday, June 23, 2008 5:00 PM
To: 'pswan@luce.com'
Cc: McCallum, Stephanie S.
Subject: Abbott Labs. v. Church & Dwight - subpoena

Pat -

I am writing to follow up on our previous conversation and my voice mail from last week regarding Scantibodies' response to the subpoena served by Abbott in this matter. With respect to the requested documents, please promptly provide a date certain prior to July 3 on which Abbott can expect to receive all responsive documents from Scantibodies. With respect to the subpoenaed deposition, please promptly identify which person or persons Scantibodies will designate to testify, and provide dates available for a deposition to take place prior to July 16.

Feel free to contact me if you have any questions.

Regards,
Kevin

Kevin E. Warner
Associate

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5852
F: +1 (312) 558-5700

bio | vcard | email | www.winston.com



The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 6

PAGE 2 OF 2

9/5/2008

EXHIBIT 7

Swan, Pat

From: Warner, Kevin E. [KWarner@winston.com]
Sent: Friday, August 01, 2008 4:20 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.; Warner, Kevin E.
Subject: Abbott Laboratories et al. v. Church & Dwight, 07-3428
Follow Up Flag: Follow up
Flag Status: Red
Attachments: Subpoena.pdf

Pat -

Please let me know by close of business on Monday, August 4, whether you can and will accept service of the attached subpoena to Scantibodies Laboratory. We will have the subpoena served directly if we do not hear from you by then.

I will contact you Monday to discuss the outstanding document and deposition requests associated with the previous subpoena served on Scantibodies in this case.

Regards,
Kevin

Kevin E. Warner
Associate

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com

**WINSTON
& STRAWN**
LLP

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 7

PAGE 1 OF 6

9/5/2008

AO88 (Rev. 12/07) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT
 Southern District of California

Abbott Laboratories and SurModics, Inc.

V.

Church & Dwight Co., Inc.

SUBPOENA IN A CIVIL CASE

Case Number:¹ 1:07-cv-03428 (MFK) (N.D. Ill.)

TO: Scantibodies Laboratory, Inc.
 9336 Abraham Way
 San Diego, CA 92121-2904

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Schedule A, attached.

PLACE

DATE AND TIME

- ☒ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

See Schedule A, attached

DATE AND TIME

8/22/2008 9:00 am

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorney for Plaintiffs Abbott Laboratories and SurModics, Inc.

8/1/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Kevin E. Warner, Esq., Winston & Strawn LLP, 35 West Wacker Dr., Chicago, IL 60601
 (312) 558-5600

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

EXHIBIT 7

PAGE 2 OF 6

AQ88 (Rev. 12/07) Subpoena in a Civil Case (Page 2)

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT 7

PAGE 3 OF 6

SCHEDULE A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

_____	X	
ABBOTT LABORATORIES	:	
and	:	Honorable Matthew Kennelly, U.S.D.J.
SURMODICS, INC., (involuntary plaintiff),	:	
	:	Case No. 07 CV 3428
Plaintiffs,	:	
	:	
v.	:	
	:	
CHURCH & DWIGHT CO., INC.,	:	
	:	
Defendant.	:	
_____	X	

**PLAINTIFF ABBOTT LABORATORIES' RULE 34 REQUEST TO THIRD PARTY
SCANTIBODIES TO PERMIT ENTRY AND INSPECTION OF
SCANTIBODIES' PREMISES**

Pursuant to Rules 34 and 45 of the Federal Rules of Civil Procedure, Plaintiff Abbott Laboratories ("Abbott") requests that third-party Scantibodies Laboratory, Inc. ("Scantibodies") permit Abbott to enter Scantibodies' (a) production plant or facilities; (b) manufacturing plant or facilities; (c) assembly plant or facilities; and/or (d) quality control and assurance plant or facilities, wherever located but including at least at 9336 Abraham Way, Santee, California 92071, for the purpose of inspecting, photographing and videotaping premises, objects, product, equipment and operations that concern the production, manufacture and/or assembly of any test for the diagnosis of pregnancy or ovulation for or on behalf of Church & Dwight Co., Inc., or any component part thereof ("C&D Test Kits").

Inspecting, photographing and/or videotaping of the designated plant, facilities or other premises, shall commence at 9:00 a.m. on August 22, 2008, and shall continue until completed. Inspection of the designated plant, facilities and/or other premises shall be during an actual production run or runs of commercial batches of C&D Test Kits for the detection of pregnancy and ovulation. The requested inspection may be conducted by counsel for Abbott, a videographer, photographer and one or more experts.

Dated: August 1, 2008

Respectfully Submitted,

ABBOTT LABORATORIES

By:

One of its Attorneys

George C. Lombardi
Raymond Perkins
Stephanie McCallum
Kevin E. Warner
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601
(312) 558-5600

Attorneys for Plaintiff Abbott Laboratories

EXHIBIT 7

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true and correct copy of the following document:

PLAINTIFF ABBOTT LABORATORIES' RULE 34 REQUEST TO THIRD PARTY
SCANTIBODIES TO PERMIT ENTRY AND INSPECTION OF
SCANTIBODIES' PREMISES

was served on August 1, 2008, by the method indicated:

BY EMAIL AND U.S. MAIL:

Anastasia Heffner
Glen Belvis
BRINKS, HOFER, GILSON & LIONE
NBC Tower, Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611-5599

BY EMAIL AND U.S. MAIL

James H. Shalek
Baldassare Vinti
John Stellabotte
Steven Hollinstat
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036-8299
212.969.2900 (fax)

BY EMAIL AND U.S. MAIL

Cyrus A. Morton
Trevor J. Foster
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402

/s/ Kevin E. Warner
Kevin E. Warner

EXHIBIT 8

Swan, Pat

From: Swan, Pat
Sent: Monday, August 04, 2008 8:27 AM
To: 'Warner, Kevin E.'
Cc: 'McCallum, Stephanie S.'; Swan, Pat
Subject: RE: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Dear Kevin,

I can accept service of the new subpoena to SLI.

I have never heard back from you in response to my July 24, 2008 e-mail regarding the first subpoena. The text of that e-mail stated:

"I called and left you a message to call me back.

As I understand it, the only documents you are seeking from SLI are those described in no. 11 of the List of Documents attached to the subpoena. Unfortunately, there is no time limitation in no. 11, making it overbroad, burdensome and oppressive. We will produce responsive documents, but we need to have an agreed-upon time limitation. The description in no. 11 is also overbroad. Based on our communications, I understand that the request seeks documents relating to the testing of the antibodies. Your e-mail below also mentions certifications, which is not in no. 11. I would appreciate it if you would clarify what you are requesting."

I would appreciate it if you would let me know.

Yours, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Friday, August 01, 2008 4:20 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.; Warner, Kevin E.
Subject: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Pat -

Please let me know by close of business on Monday, August 4, whether you can and will accept service of the attached subpoena to Scantibodies Laboratory. We will have the subpoena served directly if we do not hear from you by then.

I will contact you Monday to discuss the outstanding document and deposition requests associated with the previous subpoena served on Scantibodies in this case.

Regards,
Kevin

EXHIBIT 8
PAGE 1 OF 2

9/5/2008

Kevin E. Warner
Associate

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com



The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 8
PAGE 2 OF 2

9/5/2008

EXHIBIT 9

Swan, Pat

From: Warner, Kevin E. [KWarner@winston.com]
Sent: Monday, August 04, 2008 9:20 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.
Subject: RE: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Pat -

Thank you for agreeing to accept service of the subpoena. We consider the subpoena as having been served today, August 4, 2008.

I have tried on several occasions to call you to discuss your e-mail of July 24 to clarify Abbott's requests, but have been unable to reach you. In order to facilitate SLI's production, please note the following. First, during our last phone conversation to discuss SLI's production in response to the subpoena, I highlighted the category of documents exemplified by Request No. 11 as a category of documents that may not have been produced by Church & Dwight in this litigation. Such documents would thus not be subject to any objection by SLI that further production would be duplicative. Abbott is not, however, withdrawing any or all of its other document requests. To the extent SLI has documents responsive to those categories that have not been produced in this litigation by Church & Dwight, we request that you produce those documents as well.

Abbott believes Request No. 11 is proper in terms of the scope of its subject matter and is not objectionable because, as you claim, there is no time limitation. Documents concerning the the antibodies used in any accused C&D Test Kit are relevant, regardless of the date of their creation. For instance, documents concerning the properties and characteristics of the antibodies used in the accused Test Kits are relevant to the extent they were created during the period of SLI's relationship with Church & Dwight. Such documents that relate to the same antibodies and/or cell lines are not irrelevant simply because they may pre-date that relationship.

With respect to my comment about "certifications," Abbott is asking for any documents such as certificates or specifications that report any properties or characteristics of the subject antibodies. Such certificates would be, for instance, formal documentation of the "tests, analyses [or] evaluations" that are called for in Request No. 11.

By this Thursday, please provide a date certain on or before August 15 on which these documents will be produced. We believe that date is more than reasonable, given that SLI has had this subpoena since April 2008.

We have also not received any proposed dates regarding the Rule 30(b)(6) deposition of SLI. By Thursday, please also provide all available dates in August for the Rule 30(b)(6) deposition of SLI.

I am traveling for the next few days. If you have any further questions about the subpoena, please contact me at 773-727-1988.

Regards,
Kevin

EXHIBIT 9

PAGE 1 OF 3

9/5/2008

From: Swan, Pat [mailto:pswan@LUCE.com]
Sent: Monday, August 04, 2008 10:27 AM
To: Warner, Kevin E.
Cc: McCallum, Stephanie S.; Swan, Pat
Subject: RE: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Dear Kevin,

I can accept service of the new subpoena to SLI.

I have never heard back from you in response to my July 24, 2008 e-mail regarding the first subpoena. The text of that e-mail stated:

"I called and left you a message to call me back.

As I understand it, the only documents you are seeking from SLI are those described in no. 11 of the List of Documents attached to the subpoena. Unfortunately, there is no time limitation in no. 11, making it overbroad, burdensome and oppressive. We will produce responsive documents, but we need to have an agreed-upon time limitation. The description in no. 11 is also overbroad. Based on our communications, I understand that the request seeks documents relating to the testing of the antibodies. Your e-mail below also mentions certifications, which is not in no. 11. I would appreciate it if you would clarify what you are requesting."

I would appreciate it if you would let me know.

Yours, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Friday, August 01, 2008 4:20 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.; Warner, Kevin E.
Subject: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Pat -

Please let me know by close of business on Monday, August 4, whether you can and will accept service of the attached subpoena to Scantibodies Laboratory. We will have the subpoena served directly if we do not hear from you by then.

I will contact you Monday to discuss the outstanding document and deposition requests associated with the previous subpoena served on Scantibodies in this case.

Regards,
Kevin

Kevin E. Warner
Associate

Winston & Strawn LLP

EXHIBIT 9

PAGE 2 OF 3

35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com



The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

CONFIDENTIAL

Luce, Forward, Hamilton & Scripps LLP

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments without reading, printing, copying or forwarding it, and please notify us.

<http://www.luce.com>



Please consider the environment before printing this email.

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 9

PAGE 3 OF 3

9/5/2008

EXHIBIT 10

Swan, Pat

From: Swan, Pat
Sent: Sunday, August 10, 2008 9:47 PM
To: 'Warner, Kevin E.'
Cc: Swan, Pat
Subject: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Dear Kevin,

I am disappointed in your message below. Despite our earlier conversation and agreement that you were now only seeking documents pursuant to Request No. 11, you are now attempting to renege. That is unacceptable.

As to Request No. 11, the lack of a time limitation makes it unreasonable. Further, it ignores the fact that the product has a two-year shelf life. We will produce responsive, non-privileged documents going back two years. We hope to have these documents copied by August 25th.

Scantibodies' Rule 30(b)(6) witness on testing will be Jerry Sun. I assume you will want to depose him after you receive the documents. Please let me know what dates are available for you after August 25th.

Yours, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Monday, August 04, 2008 9:20 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.
Subject: RE: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Pat -

Thank you for agreeing to accept service of the subpoena. We consider the subpoena as having been served today, August 4, 2008.

I have tried on several occasions to call you to discuss your e-mail of July 24 to clarify Abbott's requests, but have been unable to reach you. In order to facilitate SLI's production, please note the following. First, during our last phone conversation to discuss SLI's production in response to the subpoena, I highlighted the category of documents exemplified by Request No. 11 as a category of documents that may not have been produced by Church & Dwight in this litigation. Such documents would thus not be subject to any objection by SLI that further production would be duplicative. Abbott is not, however, withdrawing any or all of its other document requests. To the extent SLI has documents responsive to those categories that have not been produced in this litigation by Church & Dwight, we request that you produce those documents as well.

Abbott believes Request No. 11 is proper in terms of the scope of its subject matter and is not objectionable because, as you claim, there is no time limitation. Documents concerning the the

EXHIBIT 10

PAGE 1 OF 4

9/5/2008

antibodies used in any accused C&D Test Kit are relevant, regardless of the date of their creation. For instance, documents concerning the properties and characteristics of the antibodies used in the accused Test Kits are relevant to the extent they were created during the period of SLI's relationship with Church & Dwight. Such documents that relate to the same antibodies and/or cell lines are not irrelevant simply because they may pre-date that relationship.

With respect to my comment about "certifications," Abbott is asking for any documents such as certificates or specifications that report any properties or characteristics of the subject antibodies. Such certificates would be, for instance, formal documentation of the "tests, analyses [or] evaluations" that are called for in Request No. 11.

By this Thursday, please provide a date certain on or before August 15 on which these documents will be produced. We believe that date is more than reasonable, given that SLI has had this subpoena since April 2008.

We have also not received any proposed dates regarding the Rule 30(b)(6) deposition of SLI. By Thursday, please also provide all available dates in August for the Rule 30(b)(6) deposition of SLI.

I am traveling for the next few days. If you have any further questions about the subpoena, please contact me at 773-727-1988.

Regards,
Kevin

From: Swan, Pat [mailto:pswan@LUCE.com]
Sent: Monday, August 04, 2008 10:27 AM
To: Warner, Kevin E.
Cc: McCallum, Stephanie S.; Swan, Pat
Subject: RE: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Dear Kevin,

I can accept service of the new subpoena to SLI.

I have never heard back from you in response to my July 24, 2008 e-mail regarding the first subpoena. The text of that e-mail stated:

"I called and left you a message to call me back.

As I understand it, the only documents you are seeking from SLI are those described in no. 11 of the List of Documents attached to the subpoena. Unfortunately, there is no time limitation in no. 11, making it overbroad, burdensome and oppressive. We will produce responsive documents, but we need to have an agreed-upon time limitation. The description in no. 11 is also overbroad. Based on our communications, I understand that the request seeks documents relating to the testing of the antibodies. Your e-mail below also mentions certifications, which is not in no. 11. I would appreciate it if you would clarify what you are requesting."

EXHIBIT 10

PAGE 2 OF 4

9/5/2008

I would appreciate it if you would let me know.

Yours, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Friday, August 01, 2008 4:20 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.; Warner, Kevin E.
Subject: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Pat -

Please let me know by close of business on Monday, August 4, whether you can and will accept service of the attached subpoena to Scantibodies Laboratory. We will have the subpoena served directly if we do not hear from you by then.

I will contact you Monday to discuss the outstanding document and deposition requests associated with the previous subpoena served on Scantibodies in this case.

Regards,
Kevin

Kevin E. Warner
Associate

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com



The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

CONFIDENTIAL

Luce, Forward, Hamilton & Scripps LLP

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments without reading, printing, copying or forwarding it, and please notify us.

<http://www.luce.com>



Please consider the environment before printing this email.

EXHIBIT 10

PAGE 3 OF 4

The contents of this message may be privileged and confidential. Therefore, if this message has been

9/5/2008

received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 10

PAGE 4 OF 4

EXHIBIT 11

Swan, Pat

From: Warner, Kevin E. [KWarner@winston.com]
Sent: Monday, August 11, 2008 6:42 AM
To: Swan, Pat
Cc: Warner, Kevin E.; Perkins, Ray
Subject: RE: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Pat,

You have mischaracterized our earlier conversation about Abbott's subpoena to SLI. I am sure you recall that there was no specific mention whatsoever of "Topic 11" during any of our previous phone conversations, and I never agreed to narrow the subpoena to any particular document categories and forego others. I am not attempting to "renege" on any agreement, and I stand by my representation below of our previous conversations.

Further, your objection regarding the time limit of Topic No. 11 is untenable and does not appear to be made in good faith. The "shelf-life" of any of the relevant antibodies is of course irrelevant to what documents might be responsive. A document that characterizes an antibody prior to the expiration of its "shelf-life" does not become irrelevant or of less importance at any time thereafter simply because the antibody itself may no longer be active. In any event, we will not further debate this issue and will seek the Court's assistance in enforcing the subpoena.

As for the deposition of Jerry Sun, we are available any day during the weeks of September 1 or September 8. We need to take the deposition after Abbott's inspection of Scantibodies' premises, so we request that you immediately provide dates for both during those weeks.

Regards,
Kevin

From: Swan, Pat [mailto:pswan@LUCE.com]
Sent: Sunday, August 10, 2008 11:47 PM
To: Warner, Kevin E.
Cc: Swan, Pat
Subject: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Dear Kevin,

I am disappointed in your message below. Despite our earlier conversation and agreement that you were now only seeking documents pursuant to Request No. 11, you are now attempting to renege. That is unacceptable.

As to Request No. 11, the lack of a time limitation makes it unreasonable. Further, it ignores the fact that the product has a two-year shelf life. We will produce responsive, non-privileged documents going back two years. We hope to have these documents copied by August 25th.

Scantibodies' Rule 30(b)(6) witness on testing will be Jerry Sun. I assume you will want to depose him after you receive the documents. Please let me know what dates are available for you after August 25th.

EXHIBIT 11
PAGE 1 OF 4

9/5/2008

Yours, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Monday, August 04, 2008 9:20 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.
Subject: RE: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Pat -

Thank you for agreeing to accept service of the subpoena. We consider the subpoena as having been served today, August 4, 2008.

I have tried on several occasions to call you to discuss your e-mail of July 24 to clarify Abbott's requests, but have been unable to reach you. In order to facilitate SLI's production, please note the following. First, during our last phone conversation to discuss SLI's production in response to the subpoena, I highlighted the category of documents exemplified by Request No. 11 as a category of documents that may not have been produced by Church & Dwight in this litigation. Such documents would thus not be subject to any objection by SLI that further production would be duplicative. Abbott is not, however, withdrawing any or all of its other document requests. To the extent SLI has documents responsive to those categories that have not been produced in this litigation by Church & Dwight, we request that you produce those documents as well.

Abbott believes Request No. 11 is proper in terms of the scope of its subject matter and is not objectionable because, as you claim, there is no time limitation. Documents concerning the the antibodies used in any accused C&D Test Kit are relevant, regardless of the date of their creation. For instance, documents concerning the properties and characteristics of the antibodies used in the accused Test Kits are relevant to the extent they were created during the period of SLI's relationship with Church & Dwight. Such documents that relate to the same antibodies and/or cell lines are not irrelevant simply because they may pre-date that relationship.

With respect to my comment about "certifications," Abbott is asking for any documents such as certificates or specifications that report any properties or characteristics of the subject antibodies. Such certificates would be, for instance, formal documentation of the "tests, analyses [or] evaluations" that are called for in Request No. 11.

By this Thursday, please provide a date certain on or before August 15 on which these documents will be produced. We believe that date is more than reasonable, given that SLI has had this subpoena since April 2008.

We have also not received any proposed dates regarding the Rule 30(b)(6) deposition of SLI. By Thursday, please also provide all available dates in August for the Rule 30(b)(6) deposition of SLI.

I am traveling for the next few days. If you have any further questions about the subpoena, please contact me at 773-727-1988.

Regards,
Kevin

From: Swan, Pat [mailto:pswan@LUCE.com]
Sent: Monday, August 04, 2008 10:27 AM
To: Warner, Kevin E.
Cc: McCallum, Stephanie S.; Swan, Pat
Subject: RE: Abbott Laboratories et al. v. Church & Dwight, 07-3428

EXHIBIT 11

PAGE 2 OF 4

Dear Kevin,

I can accept service of the new subpoena to SLI.

I have never heard back from you in response to my July 24, 2008 e-mail regarding the first subpoena. The text of that e-mail stated:

"I called and left you a message to call me back.

As I understand it, the only documents you are seeking from SLI are those described in no. 11 of the List of Documents attached to the subpoena. Unfortunately, there is no time limitation in no. 11, making it overbroad, burdensome and oppressive. We will produce responsive documents, but we need to have an agreed-upon time limitation. The description in no. 11 is also overbroad. Based on our communications, I understand that the request seeks documents relating to the testing of the antibodies. Your e-mail below also mentions certifications, which is not in no. 11. I would appreciate it if you would clarify what you are requesting."

I would appreciate it if you would let me know.

Yours, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Friday, August 01, 2008 4:20 PM
To: Swan, Pat
Cc: McCallum, Stephanie S.; Warner, Kevin E.
Subject: Abbott Laboratories et al. v. Church & Dwight, 07-3428

Pat -

Please let me know by close of business on Monday, August 4, whether you can and will accept service of the attached subpoena to Scantibodies Laboratory. We will have the subpoena served directly if we do not hear from you by then.

I will contact you Monday to discuss the outstanding document and deposition requests associated with the previous subpoena served on Scantibodies in this case.

Regards,
Kevin

Kevin E. Warner
Associate

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com



EXHIBIT 11

PAGE 3 OF 4

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

CONFIDENTIAL

Luce, Forward, Hamilton & Scripps LLP

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments without reading, printing, copying or forwarding it, and please notify us.

<http://www.luce.com>



Please consider the environment before printing this email.

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

CONFIDENTIAL

Luce, Forward, Hamilton & Scripps LLP

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments without reading, printing, copying or forwarding it, and please notify us.

<http://www.luce.com>



Please consider the environment before printing this email.

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 11

PAGE 4 OF 4

EXHIBIT 12

Swan, Pat

From: Warner, Kevin E. [KWarner@winston.com]
Sent: Monday, August 18, 2008 5:54 AM
To: Swan, Pat
Cc: McCallum, Stephanie S.
Subject: Abbott Labs. and SurModics v. Church & Dwight

Pat -

I have not received any response from you regarding the subpoena Abbott served on August 4, containing a notice of inspection for August 22, 2008. Please let me know by the end of the day whether Scantibodies intends to permit the inspection to go forward that day.

Regards,
Kevin

Kevin E. Warner

Associate

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com



The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 12

PAGE 1 OF 1

9/5/2008

EXHIBIT 13

Swan, Pat

From: Swan, Pat
Sent: Monday, August 18, 2008 9:13 PM
To: 'Warner, Kevin E.'
Cc: Swan, Pat
Subject: RE: Abbott Labs. and SurModics v. Church & Dwight

Dear Kevin,

We served objections today to the inspection subpoena, and we will not agree to the requested inspection. Please let me know your thoughts after you receive the objections.

I received your 8/11/08 e-mail that came last week while I was out on vacation. Suffice it to say we disagree with your revisionist history and positions.

Yours, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Monday, August 18, 2008 5:54 AM
To: Swan, Pat
Cc: McCallum, Stephanie S.
Subject: Abbott Labs. and SurModics v. Church & Dwight

Pat -

I have not received any response from you regarding the subpoena Abbott served on August 4, containing a notice of inspection for August 22, 2008. Please let me know by the end of the day whether Scantibodies intends to permit the inspection to go forward that day.

Regards,
Kevin

Kevin E. Warner
Associate

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com



The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 13

PAGE 1 OF 1

9/5/2008

EXHIBIT 14

Edward Patrick Swan, Jr., State Bar No. 089429
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone No.: 619.699.2415
Fax No.: 619.645.5321

Attorneys for Non-Party Scantibodies Laboratory, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABBOTT LABORATORIES,

Plaintiff,

v.

CHURCH & DWIGHT CO., INC.,

Defendant.

Case No. 07-CV-3428 (MFK)
(Pending in the Northern District of Illinois)

**NON-PARTY SCANTIBODIES
LABORATORY, INC.'S RESPONSES
AND OBJECTIONS TO PLAINTIFF
ABBOTT LABORATORIES' SUBPOENA
TO PERMIT INSPECTION**

Non-party Scantibodies Laboratory, Inc. ("Scantibodies") hereby responds and objects to plaintiff Abbott Laboratories' ("Abbott") Subpoena to permit inspection dated August 1, 2008 (the "Subpoena").

The Subpoena seeks to permit Abbott to enter Scantibodies' "plant, facilities or other premises" for the "purpose of inspecting, photographing and videotaping premises, objects, product, equipment and operations that concern the production, manufacture and/or assembly of any test for the diagnosis of pregnancy or ovulation for or on behalf of Church & Dwight, Inc., or any component part thereof (C&D Test Kits)." It further seeks to conduct such inspection, photographing and/or videotaping for an unlimited period of time starting on August 22, 2008 at 9:00 a.m., and states that the inspection "shall be during an actual production run or runs of commercial batches of C&D Test Kits for the detection of pregnancy and ovulation." It further provides that the inspection "may be conducted by counsel for Abbott, a videographer,

EXHIBIT 14

1

PAGE 1 OF 5

Case No. 07-CV-3428 (MFK)

1 photographer and one or more experts," none of whom are identified by name.

2 The Subpoena is objected to on the following grounds:

3 1. The Subpoena is overly broad, unduly burdensome, not reasonably calculated to the
4 discovery of admissible evidence and not relevant to any claim or defense on the grounds that the
5 asserted claims of the patents-in-suit are not directed to a method of manufacture. Instead, the
6 asserted claims are device claims and method of use claims. Scantibodies is informed and
7 believes that Church & Dwight Co., Inc. ("C&D") has produced documents, including documents
8 of Scantibodies, detailing the ingredients, components, and materials of the devices manufactured
9 by Scantibodies for C&D as well as documents detailing the function, operation and method of
10 use of the devices manufactured by Scantibodies for C&D.

11 2. The Subpoena is harassing in that it seeks information that is cumulative and
12 duplicative of information contained in the documents produced by C&D and already in Abbott's
13 possession.

14 3. The Subpoena is harassing in that it seeks information that is cumulative and
15 duplicative of Abbott's 30(b)(6) deposition of C&D and duplicative of information requested by
16 Abbott's prior subpoena to Scantibodies.

17 4. The Subpoena seeks "inspection, photographing and/or videotaping" of
18 Scantibodies' "plant, facilities or other premises" where Scantibodies manufactures product, and
19 such "inspection, photographing and/or videotaping" would unreasonably, improperly and
20 impermissibly reveal and copy Scantibodies' trade secrets and other confidential research,
21 development and commercial information, and thereby require disclosure of privileged or other
22 protected matter.

23 5. The scope of the Subpoena, both as to the unlimited time of the inspection and the
24 areas to be inspected, is overly broad, unduly burdensome and oppressive.

25 6. The inspection sought by the Subpoena will unreasonably interfere and obstruct
26 Scantibodies' manufacturing and other operations.

27 7. The inspection sought by the Subpoena would allow unauthorized persons into the
28 Scantibodies' manufacturing facility, presenting safety and liability issues.

EXHIBIT 14

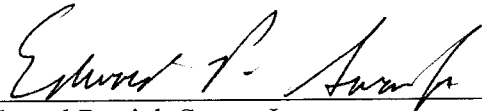
PAGE 2 OF 5

8. The inspection sought by the Subpoena seeks inspection by unnamed persons.

Based on these objections, Scantibodies will not allow inspection pursuant to the terms of the Subpoena.

DATED: August 18, 2008

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: 
Edward Patrick Swan, Jr.
Attorneys for Non-Party Scantibodies Laboratory, Inc.

101111444.1

EXHIBIT 14
PAGE 3 OF 5

CERTIFICATE OF SERVICE

Abbott Laboratories v. Church & Dwight Co., Inc.
U.S. District Court, Southern District of California
Case No. 07-CV-3428 (MFK) (Pending in the Northern District of Illinois)

I am employed with the law firm of Luce, Forward, Hamilton & Scripps LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101-3372. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service; I am over the age of eighteen years, and am not a party to this action.

On August 18, 2008, I served the following:

**NON-PARTY SCANTIBODIES LABORATORY, INC.'S RESPONSES AND
OBJECTIONS TO PLAINTIFF ABBOTT LABORATORIES' SUBPOENA TO
PERMIT INSPECTION**

on the below parties in this action by placing a true copy (copies) thereof in a separate envelope(s), addressed as shown, for collection and mailing on the below indicated day pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business:

Stephanie McCallum, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Attorneys for Abbott Laboratories

Baldo Vinti, Esq.
Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
Attorneys for Church & Dwight Co., Inc.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXHIBIT 14

PAGE 4 OF 5

Executed at San Diego, California on August 18, 2008.

Dorene Charles

Dorene Charles

101094881.1

EXHIBIT 14

PAGE 5 OF 5

EXHIBIT 15

Swan, Pat

From: Warner, Kevin E. [KWarner@winston.com]
Sent: Thursday, August 28, 2008 1:05 PM
To: Swan, Pat
Subject: RE: Abbott Labs. and SurModics v. Church & Dwight

Pat -

I have not received the objections you mentioned below. Please forward a copy to me as soon as possible.

Regards,
Kevin

From: Swan, Pat [mailto:pswan@LUCE.com]
Sent: Monday, August 18, 2008 11:13 PM
To: Warner, Kevin E.
Cc: Swan, Pat
Subject: RE: Abbott Labs. and SurModics v. Church & Dwight.

Dear Kevin,

We served objections today to the inspection subpoena, and we will not agree to the requested inspection. Please let me know your thoughts after you receive the objections.

I received your 8/11/08 e-mail that came last week while I was out on vacation. Suffice it to say we disagree with your revisionist history and positions.

Yours, Pat

From: Warner, Kevin E. [mailto:KWarner@winston.com]
Sent: Monday, August 18, 2008 5:54 AM
To: Swan, Pat
Cc: McCallum, Stephanie S.
Subject: Abbott Labs. and SurModics v. Church & Dwight

Pat -

I have not received any response from you regarding the subpoena Abbott served on August 4, containing a notice of inspection for August 22, 2008. Please let me know by the end of the day whether Scantibodies intends to permit the inspection to go forward that day.

Regards,
Kevin

Kevin E. Warner
Associate

EXHIBIT 15
PAGE 1 OF 2

9/5/2008

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601-9703
T: +1 (312) 558-5600
F: +1 (312) 558-5700

email | www.winston.com



The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

CONFIDENTIAL

Luce, Forward, Hamilton & Scripps LLP

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments without reading, printing, copying or forwarding it, and please notify us.

<http://www.luce.com>



Please consider the environment before printing this email.

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

EXHIBIT 15

PAGE 2 OF 2

9/5/2008

EXHIBIT 16

Swan, Pat

From: Charles, Dorene
Sent: Tuesday, September 02, 2008 10:13 AM
To: 'KWarner@winston.com'
Cc: Swan, Pat
Subject: Abbott v. SLI Objections

Attachments: DOC001.PDF

They were mailed served to Stephanie McCallum at your firm on August 18, 2008. Attached is another copy.



DOC001.PDF (67
KB)

CONFIDENTIAL

Dorene Charles
Legal Assistant to Pat Swan and Keith Cochran
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, CA 92101-3391
Direct Dial (619) 235-3415
Direct Fax (619) 645-5321

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments without reading, printing, copying or forwarding it, and please notify us.

EXHIBIT 16

PAGE 1 OF 1

Edward Patrick Swan, Jr., State Bar No. 089429
Caryn M. Anderson, State Bar No. 247038
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone No.: 619.236.1414
Fax No.: 619.232.8311

Attorneys for Third Party Scantibodies Laboratory Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABBOTT LABORATORIES,

Plaintiff,

v.

SCANTIBODIES LABORATORY, INC.,

Defendant.

Case No. 08-CV-1525 H (BLM)

The Hon. Barbara L. Major

**DECLARATION OF JERRY SUN IN
SUPPORT OF THIRD PARTY
SCANTIBODIES INC.'S OPPOSITION
TO MOTION TO COMPEL**

Date: September 17, 2008

Time: 3:00 p.m.

I, Jerry Sun, declare as follows:

1. I am the Manager – PTK/OV Reagents and Assays for Scantibodies Laboratory, Inc. (“SLI”). I am responsible for supervising the manufacture of pregnancy test kits for Church & Dwight Co., Inc. (“C&D”). I make this declaration in support of SLI’s opposition to Abbott Laboratories’ (“Abbott”) motion to compel. Except as otherwise noted, I have personal knowledge of the following facts, and I could competently testify thereto.

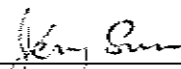
2. I have reviewed Abbott’s subpoena to inspect SLI’s manufacturing facility. The subpoena seeks to permit Abbott to enter SLI’s “plant, facilities or other premises” for the “purpose of inspecting, photographing and videotaping premises, objects, product, equipment and operations that concern the production, manufacture and/or assembly of any test for the diagnosis of pregnancy or ovulation for or on behalf of Church & Dwight, Inc., or any component part thereof (C&D Test Kits).”

1 It further seeks to conduct such inspection, photographing and/or videotaping for an unlimited period
2 of time, and states that the inspection "shall be during an actual production run or runs of commercial
3 batches of C&D Test Kits for the detection of pregnancy and ovulation." It further provides that the
4 inspection "may be conducted by counsel for Abbott, a videographer, photographer and one or more
5 experts," none of whom are identified by name.

6 3. The subpoena seeks "inspection, photographing and/or videotaping" of SLI's "plant,
7 facilities or other premises" where SLI manufactures product. Such "inspection, photographing
8 and/or videotaping" would unreasonably, improperly and impermissibly reveal and copy SLI's trade
9 secrets and other confidential research, development and commercial information, and thereby require
10 disclosure of privileged or other protected matter. Many manufacturing processes are unique to SLI
11 and observation by a third party, especially a third party competitor could produce a competitive
12 disadvantage.

13 4. The inspection sought by the subpoena will unreasonably interfere and obstruct SLI's
14 manufacturing and other operations. The inspection sought by the subpoena would allow
15 unauthorized persons into SLI's manufacturing facility, presenting safety and liability issues. The
16 production areas are clean and semi-clean rooms and as such require specific preparation, clothing and
17 other supplies that are unique and specific to SLI. These areas are designed for those who are familiar
18 with production and may be unsafe for visitors. The chemicals and other production supplies require
19 specific degrees of safety training before entry is allowed. The inspection sought by the subpoena also
20 seeks inspection by unnamed persons.

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct, and that I executed this declaration on September 8, 2008, in San Diego,
23 California.

24
25 
26 Jerry Sun

27
28 101116773.1

CERTIFICATE OF SERVICE

Abbott Laboratories v. Scantibodies Laboratory, Inc.
U.S. District Court, Southern District of California
Case No. 08-CV-1525 H (BLM)

I, declare as follows:

I am an attorney with the law firm of Luce, Forward, Hamilton & Scripps LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101-3372. I am over the age of eighteen years, and am not a party to this action.

On September 8, 2008, I served the following:

THIRD PARTY SCANTIBODIES LABORATORY, INC.'S OPPOSITION TO MOTION TO COMPEL

DECLARATION OF EDWARD PATRICK SWAN, JR. IN SUPPORT OF THIRD PARTY SCANTIBODIES LABORATORY, INC.'S OPPOSITION TO MOTION TO COMPEL

DECLARATION OF JERRY SUN IN SUPPORT OF THIRD PARTY SCANTIBODIES LABORATORY, INC.'S OPPOSITION TO MOTION TO COMPEL

THIRD PARTY SCANTIBODIES LABORATORY, INC.'S NOTICE OF AND MOTION TO FILE DECLARATION OF STEPHEN B. SHEAR UNDER SEAL IN SUPPORT OF ITS OPPOSITION TO MOTION TO COMPEL

on the interested parties in this action by:

XX **ELECTRONIC SERVICE:** I hereby certify that I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Stephen R Smerek
ssmerek@winston.com

DECLARATION OF STEPHEN B. SHEAR [TO BE FILED UNDER SEAL]**

** **OVERNIGHT MAIL:** I sent a copy via overnight mail.

** **EMAIL:** I sent a copy via email transmission to the email addresses. I am readily familiar with this office's practice for transmissions by email. Transmissions are sent as soon as possible and are repeated, if necessary, until they are reported as complete and without error. In sending the foregoing documents by email, I followed this office's ordinary business practices. The sending email address is dcharles@luce.com.

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

George C Lombardi

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601

Raymond C. Perkins

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601

Kevin E. Warner

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601

I declare that I am employed in the office at whose direction the service was made.

Executed at San Diego, California on September 8, 2008.

/s/ Edward Patrick Swan, Jr.